

## CHARGES

Police Officer Bruce Askew, Star Number 9015, is charged with violating the following rules contained in Article V of the Rules and Regulations of the Chicago Police Department, which were in full force and effect on the dates of the alleged violations.

- |         |  |
|---------|--|
| Rule 1: | Violation of any law or ordinance  |
| Rule 2: | Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department |
| Rule 6: | Disobedience of an order or directive, whether written or oral   |
| Rule 8: | Disrespect to or maltreatment of any person, while on or off duty  |
| Rule 9: | Engaging in any unjustified verbal or physical altercation with any person, while on or off duty                                     |

## SPECIFICATIONS

1. Police Officer Bruce Askew, Star Number 9015, is charged with violating Rule 1, "Violation of any law or ordinance," in the following instances:

Count I: On or about October 7, 2006, at approximately 1210 hours, at or near 6408 South Marshfield Avenue, Chicago, Illinois, Police Officer Bruce Askew intentionally or knowingly without legal justification caused bodily harm to Greg Larkins, in that Police Officer Bruce Askew physically struck Greg Larkins about the head and/or about the shoulder and/or about the left leg and/or about the body using a baton, causing Greg Larkins to sustain injuries to his head and/or causing Greg Larkins to obtain seven (7) stitches and/or staples in his head, in violation of Illinois Compiled Statutes Chapter 720 Section 5/12-3 (a)(1).

Count II: On or about October 7, 2006, at approximately 1210 hours, at or near 6408 South Marshfield Avenue, Chicago, Illinois, Police Officer Bruce Askew intentionally and/or knowingly without legal justification made physical contact of an insulting or provoking nature with Greg Larkins, in that Police Officer Bruce Askew struck Greg Larkins about the head and/or about the shoulder and/or about the left leg and/or about the body using a baton, in violation of Illinois Compiled Statutes Chapter 720 Section 5/12-3 (a)(2).

2. Police Officer Bruce Askew, Star Number 9015, is charged with violating Rule 2, "Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department," in the following instances:

Count I: On or about October 7, 2006, at approximately 1210 hours, at or near 6408 South Marshfield Avenue, Chicago, Illinois, without justification, Police Officer Bruce Askew physically struck Greg Larkins about the head and/or about the shoulder and/or about the left leg and/or about the body using a baton and/or causing Greg Larkins to sustain injuries to his head and/or causing Greg Larkins to obtain seven (7) stitches and/or staples in his head, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Count II: On or about October 7, 2006, or shortly thereafter, Police Officer Bruce Askew disobeyed an order or directive, in that Police Officer Bruce Askew failed to complete and/or submit a Tactical Response Report in violation of General Order 02-08-05, III, A, regarding his physical contact with Greg Larkins, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

3. Police Officer Bruce Askew, Star Number 9015, is charged with violating Rule 6, "Disobedience of an order or directive, whether written or oral," in the following instance:

On or about October 7, 2006, or shortly thereafter, Police Officer Bruce Askew disobeyed an order or directive, whether written or oral, in that Police Officer Bruce Askew failed to complete and/or submit a Tactical Response Report in violation of General Order 02-08-05, III, A, regarding his physical contact with Greg Larkins.

4. Police Officer Bruce Askew, Star Number 9015, is charged with violating Rule 8, "Disrespect to or maltreatment of any person, while on or off duty," in the following instance:


On or about October 7, 2006, at approximately 1210 hours, at or near 6408 South Marshfield Avenue, Chicago, Illinois, without justification, while on-duty, Police Officer Bruce Askew struck Greg Larkins about the head and/or about the shoulder and/or about the left leg and/or about the body using a baton without justification, thereby disrespecting or maltreating any person, while on or off duty.



5. Police Officer Bruce Askew, Star Number 9015, is charged with Rule 9, "Engaging in any unjustified verbal or physical altercation with any person, while on or off duty," in the following instance:

On or about October 7, 2006, at approximately 1210 hours, at or near 6408 South Marshfield Avenue, Chicago, Illinois, without justification, while on-duty, Police Officer Bruce Askew physically struck Greg Larkins about the head and/or about the shoulder and/or about the left leg and/or about the body using a baton, thereby engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Based on the foregoing charges and specifications, the Superintendent recommends that Police Officer Bruce Askew, Star Number 9015, be discharged from the Chicago Police Department.

  
Garry R. McCarthy  
Superintendent of Police

APPROVED AS TO FORM  
  
Wynter C.N. Jackson  
Assistant Corporation Counsel

P. B. CASE #      FILED

11-2776 NOV 01 2011

CHICAGO POLICE DEPT.

POLICE BOARD  
-8 NOV 11 09 35

**THE POLICE BOARD OF THE CITY OF CHICAGO**

IN THE MATTER OF THE  
CHARGES AGAINST

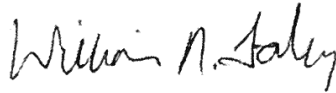
Police Officer Bruce B. Askew

Case # 11 PB 2776

Respondent

**APPEARANCE**

The undersigned, attorney, hereby enters his appearance on behalf of the Respondent in the above-captioned case.



---

William N. Fahy  
Attorney for Officer Bruce B. Askew

Law Offices of William N. Fahy, Ltd  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
Tel (312) 655-1100  
Fax (312) 655-7661

POLICE BOARD  
-8 NOV 11 09 30

THE POLICE BOARD OF THE CITY OF CHICAGO  
30 N. LASALLE STREET, 12<sup>TH</sup> FLOOR

IN THE MATTER OF THE  
CHARGES AGAINST

Police Officer Bruce B. Askew

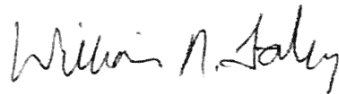
Case # 11 PB 2776

Respondent.

### MOTION FOR DISCOVERY

The Respondent in the above-captioned case, Police Officer Bruce B. Askew, through his attorney, William N. Fahy, respectfully makes this request for discovery from the City of Chicago, Department of Law. The Respondent is seeking a copy of the complaint register file which pertains to this case. The Respondent is also asking to be provided with copies of any recordings, photographs or video-tapes which the City plans on introducing into evidence in the hearing of this matter. Finally, the Respondent is requesting any documents or information in the possession of the Chicago Police Department which is favorable to him.

RESPECTFULLY SUBMITTED,



---

William N. Fahy  
Attorney for Officer Bruce B. Askew

Law Offices of William N. Fahy, Ltd  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
Tel (312) 655-1100  
Fax (312) 655-7661

BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO

IN THE MATTER OF CHARGES )  
AGAINST )  
Police Officer Bruce Askew, ) 11 PB 2776  
Respondent. )

**RECEIVED**

DEC 09 2011

Police Board  
City of Chicago

NOTICE OF FILING

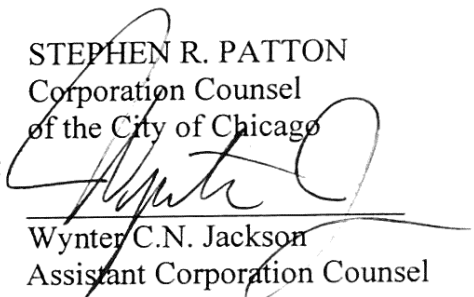
TO: VIA HAND DELIVERY  
Law Offices of William N. Fahy, Ltd.  
206 S. Jefferson Street, Suite 100  
Chicago, Illinois 60661

PLEASE TAKE NOTICE that on December 8, 2011, I filed the Superintendent's Response to Respondent's Motion for Discovery with the Police Board of the City of Chicago, a copy of which is attached and served upon you.

Respectfully submitted,

STEPHEN R. PATTON  
Corporation Counsel  
of the City of Chicago

By:

  
Wynter C.N. Jackson  
Assistant Corporation Counsel

Attorney No. 90909  
30 North LaSalle Street, Suite 1040  
Chicago, Illinois 60602  
(312) 744-4861 (v)

BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO

IN THE MATTER OF CHARGES )  
AGAINST )  
Police Officer Bruce Askew, )  
Respondent. )

11 PB 2776

RECEIVED

DEC 09 2011

Police Board  
City of Chicago

CERTIFICATE OF SERVICE

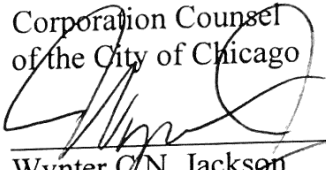
Please take notice that I have caused a true and accurate copy of Superintendent's Response to Respondent's Motion for Discovery, a copy of which is attached hereto, to be hand-delivered to Respondent's Counsel, William Fahy, Esq., or a representative thereof, at the Chicago Police Board located at 30 N. LaSalle, Suite 1220, Chicago, Illinois 60602.

DATED at Chicago, Illinois this 9<sup>th</sup> day of December, 2011.

Respectfully submitted,

STEPHEN R. PATTON  
Corporation Counsel  
of the City of Chicago

By:

  
Wynter O.N. Jackson  
Assistant Corporation Counsel

Attorney No. 90909  
30 North LaSalle Street, Suite 1040  
Chicago, Illinois 60602  
(312) 744-4861 (v)

**BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO**

<b>IN THE MATTER OF CHARGES</b>	)	
<b>AGAINST</b>	)	
<b>Police Officer Bruce Askew,</b>	)	<b>11 PB 2776</b>
<b>Respondent.</b>	)	

**RESPONSE TO RESPONDENTS' MOTION FOR DISCOVERY**

Garry McCarthy, Superintendent of Police for the Chicago Police Department, by and through his attorney Stephen R. Patton, CORPORATION COUNSEL of the City of Chicago, submits the following in response to Respondent's MOTION FOR DISCOVERY:

**REQUEST:** The Respondent in the above-captioned case, **Police Officer Bruce Askew**, through his attorney, William N. Fahy, respectfully makes this request for discovery from the City of Chicago, Department of Law. The Respondent is seeking a copy of the complaint register file which pertains to this case. The Respondent is also asking to be provided with copies of any recordings, photographs or videos-tapes which the City plans on introducing into evidence in the hearing of this matter. Finally, the Respondent is requesting any documents or information in the possession of the Chicago Police Department which is favorable to him.

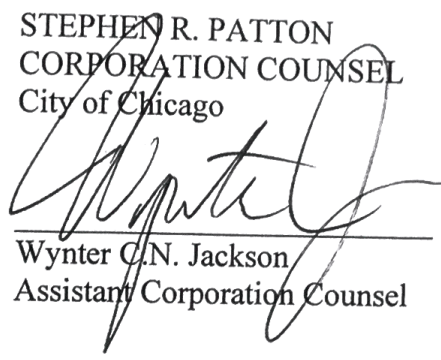
**RESPONSE:** The Superintendent objects to this request on the basis that it is beyond the scope of the discovery provisions outlined in the Chicago Police Department Rules of Procedure insofar as it requests a copy of all recordings, photographs or video-tapes which the City plans on introducing into evidence as well as a copy of any exhibits the City plans on introducing at the hearing in this matter. Without waiving any objections, please refer to the enclosed Complaint Log Number 1000301 and G.O. 02-08-05.



Respectfully submitted,

STEPHEN R. PATTON  
CORPORATION COUNSEL  
City of Chicago

By:

  
Wynter C.N. Jackson  
Assistant Corporation Counsel

30 North La Salle Street  
Suite 1040  
Chicago, IL 60602  
312-744-4861(v)  
312-742-9029 (f)

POLICE BOARD  
CITY OF CHICAGO

**CASE No. 11 PB 2776,  
BRUCE ASKEW**

Respondent's Motion to Strike and Dismiss

Superintendent's Response

Respondent's Reply

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS  
POLICE BOARD OF THE CITY OF CHICAGO

IN RE: )  
 ) No. 11 PB 2776  
 )  
BRUCE ASKEW, )  
 )  
RESPONDENT )

31 JAN 2012 15 15

**MOTION TO STRIKE AND DISMISS**

NOW comes the Respondent, Bruce Askew, by his attorney, William N. Fahy, and moves to strike and dismiss the charges filed against Respondent and dismiss this case. In support of this motion it is stated as follows:

**INTRODUCTION**

This case arises out of an incident that took place on October 7, 2006 at 6408 S. Marshfield in Chicago, Illinois. While on-duty Officer Askew responded to a call of a domestic disturbance. Upon arrival at the scene Officer Askew observed two individuals, Greg Larkins and Norman Mitchem, engaged in a fight. Officer Askew was able to separate the two men. After being separated, Mr. Larkins again went after Mr. Mitchem and began beating him. At this point Officer Askew attempted to arrest Mr. Larkins. Mr. Larkins refused to obey the commands of Officer Askew and continued beating Mr. Mitchem. Officer Askew used his baton in an attempt to subdue Mr. Larkins and place him under arrest. Mr. Larkins was able to elude the arrest and successfully fled the scene.

Several hours later, Mr. Larkins called for an ambulance and was taken to Holy Cross Hospital. There, he complained of injuries that he claimed were the result of his contact with police officers earlier that day. The police were notified and on October 8, 2006, a complaint was registered on behalf of Mr. Larkins. The Office of Professional Standards (OPS) was

notified and immediately began investigating. During the months of October and November of 2006, multiple witnesses were interviewed by OPS. No further significant activity occurred in the investigation until May and June of 2007, when statements were taken of the two police officers on the scene, Officer Pamela Sutton and the Respondent, Officer Askew.

In March 2008, the OPS Investigator's activity log indicates that this case was closed in March 2008. However, it was then re-opened to take the statement of Sgt. Shinn. (See attached activity log) After Sgt. Shinn's statement was taken in May 2008, the case was again closed. No charges were filed in 2008.

The investigation was re-opened in May 2008. Nothing of any significance occurred in the investigation over the next **2 years and 7 months** until the investigation was officially closed in January 2011. No charges were filed in 2009 or 2010. On November 3, 2011, **5 years and 1 month after the incident**, the Respondent was served with charges in this case.

All charges against this Respondent must be stricken and dismissed for failure to bring them in a timely manner.

**THE FAILURE TO BRING TIMELY CHARGES VIOLATES THE DUE PROCESS  
RIGHTS OF THE RESPONDENTS AND CHARGES SHOULD BE BARRED BY  
LACHES**

The IPRA ordinance states as follows: "**2-57-60 Public Policy**. The public policy of this chapter is to make certain that complaints concerning police misconduct and abuse are resolved **fairly and timely**. All collective bargaining agreements must be in accord with this policy." The Department certainly had sufficient time to conduct their investigation from March 24, 2006, the date of the incident and on which date the complaint was made. It chose not to bring any charges based on this investigation in a timely manner. It should therefore be barred from pursuing these charges as a matter of public policy and due process under the United States and State of Illinois constitutions. The failure of a government agency to promptly act in matters of discipline is a

denial of due process, particularly where it implicates a person's right to pursue his trade or profession, *Morgan vs Department of Financial and Professional Regulation*, (90 day suspension of psychologist license reversed where appeal took more than 15 months despite statutory requirement of prompt determination). The case of *Morgan v. Department of Financial and Professional Regulation*, 871 NE 2d 178 (1<sup>st</sup> Dist 2007) reversed an administrative decision suspending a psychologist's license due to a 15month delay in the proceedings. There statutory language required action which "shall be promptly instituted and determined." The Plaintiff in that case argued that 15 months did not constitute a "prompt determination". The State argued that since prompt was not defined anywhere, it could take as long as it wanted, including 15 months. The Court found as a matter of due process that such a delay violated the due process rights of the Plaintiff, in particular as it required a "prompt determination".

The *Morgan* Court cited the decision in *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264 (2004): "It is a well established constitutional principle that every citizen has a right to pursue a trade, occupation, business or profession. This inalienable right constitutes both a property and liberty interest entitled to the protection of the laws guaranteed by the due process clauses of the Illinois and Federal constitutions." 871 NE 2d 199.

Thus in the employment context, a massive delay in imposing discipline is an egregious violation of Constitutional principles. The *Morgan* Court went on to find that a 15-month delay did not constitute a "prompt determination" as required by law and reversed the administrative decision.

If a 15 month delay does not constitute a prompt determination, certainly a 61 month delay from the time of the incident to bring charges cannot be "timely" in the context of protecting the Respondents "right to pursue" their "trade, occupation, business or profession."

The Doctrine of Laches also applies. As the Supreme Court stated in *People v. McClure*, 218 Ill. 2d. 375 (2006): "The Laches Doctrine bars claims by those who neglected their rights to claims to the detriment of others" (citation omitted). Application of the laches doctrine requires the showing of a lack of due diligence by the party asserting the claim and prejudice to the opposing party..."218 Ill. 2d. 375 at 389. The records evidence shows the Department had notice of the alleged violation of rules and waited five (5) years ago and one (1) month from the incident to bring charges. The Department did not promptly and diligently assert its claim. There is obvious prejudice to the Respondent in losing his employment where he had been gainfully employed. Further this prejudices the Respondent in his ability to locate counter evidence years after the fact to defend against these charges.

**THE DEPARTMENT FAILED TO FOLLOW ITS OWN  
GENERAL ORDERS AND VIOLATED DUE PROCESS**

The Chicago Police Department General Orders, 93-03 Section 1 demand, "**Prompt**, thorough investigations will be conducted into allegations of misconduct established facts which can absolve the innocent and identify the guilty." Gen. Order 93 - 03 Addendum 3 requires that an investigation of a complaint against a Department member will "contact all complainants and witnesses as soon as possible, complete the investigation as soon as possible, but no later than 30 days after the date the complaint was received or on the date of any authorized extension." The Case Log in fact shows that interviews of important witnesses, including the complainant and occurrence witnesses, were completed rapidly. Yet massive gaps exist in the investigation showing that no action took place for months at a time. Yet months and years passed before any charges were filed. The Department is bound by its own General Orders to contact all complainants and witnesses, and complete its investigation "**as soon as possible**". Yet the file sat dormant for months and years before charges were filed. In the case of Anthony Howell vs.



City of Chicago Human Resources Board et al., 07 CH 28370, Judge Mary Anne Mason reversed a Board finding that surveillance evidence in a residency case which was 3 to 4 years old at the time the charges were brought should have been excluded from evidence. The court found this contrary to the provisions of the collective bargaining agreement which the employee had which required discipline **"as soon as practical"** after an alleged violation occurred, as well as on due process grounds. The Court reversed the decision of the Board and restored the employee to his job. Here the General Orders requiring completion of an investigation **"as soon as possible"** requires a similar result, and dismissal of the charges here.

**THE CITY FAILED TO FOLLOW ITS OWN  
PROCEDURE TO PROSECUTE RESPONDENTS**

An additional City of Chicago ordinance governing IPRA investigations is contained in Chicago Ordinance section 2- 57- 070: "If the chief administrator does not conclude an investigation within six months after its initiation, the chief administrator shall notify the mayor's office, the city Council committee on police and fire, the complainant, and the employee named in the complaint or his or her counsel of the general nature of the complaint or information giving rise to the investigation, and the reasons for failure to complete the investigation within six months." This Respondent was never notified in a timely manner of the general nature of the complaint, or the reasons for failure to complete the investigation within six months. Indeed, compliance with the law would have required this Respondent to have been notified at least ten (10) times (once every 6 months for 5 years) from the time of the incident to the date of charges being filed as to why the investigation had not been completed within a six-month period. Therefore the six-month notice period was not complied with by the IPRA or the Department. This Respondent is entitled to these protections as a police officer as an employee of the Department and the City of Chicago. In Duldulao vs. St. Mary of Nazareth Hospital. 115

Ill. 2d. 482 (1987) the Supreme Court found the procedural guarantees found in an employee handbook bind the employer. Here the rules written by the City of Chicago require the employer to follow these procedures and the City ignores them at its own peril. These procedural errors voided the entire proceeding against this Respondent.

**WHEREFORE** for the foregoing reasons it is respectfully requested that the charges filed against the Respondent be stricken and this case be dismissed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "William N. Fahy". The signature is written in a cursive, slightly slanted style.

William N. Fahy

**BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO**

<b>IN THE MATTER OF CHARGES</b>	)	
<b>AGAINST</b>	)	
<b>Police Officer Bruce Askew,</b>	)	<b>11 PB 2776</b>
<b>Respondent.</b>	)	<b><i>Hearing Officer Thomas Johnson</i></b>

**SUPERINTENDENT MCCARTHY'S RESPONSE TO RESPONDENT'S  
MOTION TO STRIKE AND DISMISS**

Garry McCarthy, Superintendent of Police for the Chicago Police Department, by and through his attorney Stephen R. Patton, Corporation Counsel of the City of Chicago, submits the following in response to Respondent's Motion to Strike and Dismiss.

On or about November 1, 2011, the Superintendent filed charges at the Police Board seeking the separation of Respondent Bruce Askew ("Askew") for acts Askew committed on or about October 7, 2006.

The charges against Askew allege violations of Rule 1 (violation of any law or ordinance), Rule 2 (any action or conduct which impedes the Department's effort to achieve its policy and goals or brings discredit upon the Department), Rule 6 (disobedience of an order or directive, whether written or oral), Rule 8 (disrespect to or maltreatment of any person, while on or off duty) and Rule 9 (engaging in any unjustified verbal or physical altercation with any person, while on or off duty).

Pursuant to an investigation completed by the Independent Police Review Authority ("IPRA"), it was discovered that Askew reported to the Larkins/Perry family home located at 6408 S. Marshfield, in Chicago, Illinois, in response to a call to 911 made by Mr. Norman Perry, Sr., regarding a domestic disturbance. Mr. Perry along with his wife Etta Perry and son Norman Mitchem (also referred to as Norman Perry, Jr.), reside on the second floor of the family

property. Alice Larkins, Etta Perry's sister, and Greg Larkins, Alice Larkins' son, reside on the first floor of the family property. Norman Perry, Sr. having witnessed his son, Norman, and his nephew, Greg, engaged in a verbal altercation, which turned physical, called for law enforcement officers to break-up the fight.

IPRA determined that once Askew arrived to the home, the fight had ended and Greg Larkins was standing on the porch joined by his uncle, Norman Perry, Sr. and his aunt, Etta Perry, who was standing near the doorway. All of the family members were located at varying points on or near the property. They all observed the same event: Askew hit Greg in the knee, and/or the shoulder, and/or the back of his head with a black "billy club," ASP, or device commonly referred to as baton, without provocation. Each witness was located in a different location near the family's front porch: Alice Larkins, who was standing on the cement landing/sidewalk; Etta Perry, who was standing on the porch; Norman Perry, Sr., who was also located on the porch; and Norman Mitchem, who was standing in the front yard; stated that Askew repeatedly asked Greg to stop talking. When Greg continued to talk and insisted that he had done nothing wrong and therefore asked why Askew wanted him to get on his knees, Askew hit Greg with the baton causing Greg to need seven staples on the back of his head. Greg also suffered from a separation of the acromioclavicular joint and contusions to his left knee. All of the individuals above stated that Greg was standing on the porch, at no time after Askew arrived had he continued to fight with his cousin, and the officer was upset because Greg would not stop talking. At no time did Greg become physically or verbally aggressive with Askew. Even after Askew unjustifiably hit Greg with the baton, Greg did not physically respond, instead Greg ran into the building and Askew did not follow.



Status hearings were held on or near November 17 and December 9, 2011, at which time the parties agreed to an evidentiary hearing date of February 23 and 24, 2012. On January 31, 2012, Respondent filed his Motion to Strike and Dismiss ("Motion") alleging laches, due process rights violations, failure to follow general orders, and failure to follow the Independent Police Review Authority ordinance.

Contrary to Respondent's assertions, the charges are not barred by the doctrine of laches, do not violate Respondent's due process rights, are in conformance with general orders, and are not governed by the IPRA ordinance.

#### **I. Respondent's due process rights were not violated**

Respondent's argument regarding the timeliness of the charges is without merit. The cases relied upon by Respondent, Morgan v. Department of Financial and Professional Regulation, 374 Ill. App. 3d 275 (1<sup>st</sup> Dist. 2007) and Lyon v. Department of Children and Family Services, 209 Ill.2d 264 (2004), do not stand for the general proposition articulated by Respondent as "the failure of a government agency to promptly act in matters of discipline is a denial of due process, particularly where it implicates a person's right to pursue his trade or profession." (Motion at pp. 3-4). Both the Morgan and Lyon Courts involved delay in adjudication of misconduct after the respective plaintiffs had been suspended from their jobs; neither Court dealt with the delay of the investigation, as Respondent would have this Board believe.

Respondent claims that the fifteen month delay in Morgan, is analogous to an alleged sixty-one (61) month delay here, in bringing charges against Respondent and as such, is a violation of his right to pursue his trade, occupation, business or profession. Motion at p. 4. The facts presented in Morgan are distinguishable from the instant matter. Morgan's clinical

psychologist license was suspended for a 15 month period by the Illinois Department of Financial and Professional Regulation ("the State") following allegations of unethical, unauthorized, or unprofessional sexual conduct during the treatment of a female patient. Morgan was suspended on November 4, 2003, and his hearing began December 4, 2003, and ended December 15, 2003; he was without a license until June 29, 2004, when a temporary restraining order was issued. Morgan, 374 Ill. App. at 300. The ALJ took approximately three months to issue her report, the Board took nearly four and one-half months to complete its evaluation, and the director then took over five months to reach a final decision - a span of over fifteen months *after* Morgan's license was summarily suspended. The Morgan court's due process analysis centered on the time the plaintiff was without the ability to practice his chosen profession, finding that the State violated Morgan's due process rights by not promptly reaching a final determination after the hearing. From November 4, 2003, through June 29, 2004, Morgan was prevented from exercising his profession, since he was not licensed by the State as a clinical psychologist, and presumably suffered a loss of income as a result. Notably, even while focusing on that time frame, the Court concluded that the time from Morgan's license being suspended, beginning November 4, 2003, until the time of his hearing in December of 2003, was not unduly prolonged. In essence, on the issue of timeliness, the Morgan Court criticized the Board's director for the delay in issuing the final decision. The procedural history of Morgan is entirely distinguishable from the case at bar and consequently inapplicable for the reasons set forth below.

In the instant matter, charges were filed with the Police Board on November 1, 2011. Up to and until the filing of charges, Respondent continued to work for the Chicago Police Department, and the initial status hearing was held November 17, 2011, less than one (1) month



following the filing of charges with the Board. A second status date was held December 9, 2011, and at that time, a pre-hearing conference was scheduled for February 17, 2012, and hearing dates were also scheduled by the agreement of the parties for February 23 and 24, 2012.

The time frame in Morgan began running when Morgan's license was suspended and ended when the director made his decision, which was 15 months later. Here, the evidentiary proceedings concluded on February 24, 2012, four months after Respondent was served with charges and this matter is currently pending the Police Board's decision. In Morgan, since his professional license was suspended, he was unable to earn a living using his psychologist license. Here, the Respondent continued to receive compensation until the charges were filed with the Police Board. Respondent was not precluded from working as an officer during the pendency of the investigation. The due process clause precludes a state or local government from depriving any person of life, liberty or property, and in this case, public employment, without due process of law. Respondent has received the process he was due; notice of the charges well in advance of the hearing, to which he acknowledged and pled not guilty while represented by counsel. He also exercised his right to present evidence and testimony and to cross-examine each and every witness presented by the Superintendent. Generally, this is considered sufficient to ensure due process at an administrative hearing. Abrahamson v. Illinois Dept. of Prof'l Reg'n, 153 Ill. 2d 76, 92-3 (1992), see, e.g., Sheehan v. Board of Police Fire Comm'n, 158 Ill. App. 3d 275 (1st Dist. 1987). Moreover, Mr. Morgan was without a make-whole remedy for the time his license was suspended. Here, the Police Board has the authority to order that the Respondent receive back-pay for the time he was out of work. Surely, unlike in Morgan, the Superintendent has complied with Respondent's due process rights by promptly bringing charges against Respondent following the conclusion of the investigation and cooperating in the scheduling of

the hearing. Accordingly, any allegations that Respondent's due process rights have been violated must fail.

**II. Laches does not apply to the actions of public entities unless "unusual or extraordinary circumstances" are shown, which are absent in this case.**

Respondent further argues that the doctrine of laches applies in the instant case. Motion at 4. Respondent argues that because the incident took place in October 7, 2006, but the charges were not filed until November 2011, the doctrine of laches should apply. In terms of alleged harm, Respondent asserts the "obvious prejudice to the Respondent in losing his employment where he had been gainfully employed," and his ability to "locate counter evidence years after the fact to defend against these charges." Motion at p. 4.

Laches is applied "when a party's failure to timely assert a right had caused prejudice to the adverse party." Milligan v. Bd. of Fire and Police Com'rs of Village of Glenview, 158 Ill. 2d 85, 89 (1994). In Illinois, laches applies to a governmental body's actions "only under compelling circumstances," *id.* at 90, and can only be invoked against a municipality under "extraordinary" circumstances. Van Milligan v. Board of Fire and Police Commissioners of the Village of Glenview, 158 Ill. 2d 85 (1994). Whether an action is barred because of laches is to be determined from the particular facts and circumstances of each case. Lutyens v. Ahlrich, 308 Ill. 11 (1923). "Mere delay will not constitute laches, but the delay must be such as to work to the disadvantage of the other party." *Id.* at 21. The party who invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. Hannigan v. Hoffmeister, 240 Ill. App. 3d 1065, 1074 (1<sup>st</sup> Dist. 1992). Respondent must demonstrate a prejudice or hardship, rather than mere passage of time, induced him to adversely change his position. And Respondent must demonstrate the prejudice; mere speculation will not suffice. See Forger v. Board of Fire

and Police Commissioners of the City of Markham, 40 Ill.App.3d 410 (1<sup>st</sup> Dist. 1976).

Respondent has not proven that laches should apply in this case; citing “obvious prejudice” is insufficient. Motion at p. 4.

First, as fully discussed in the subsequent section, Respondent has not been suspended for sixty-one months while the case lay dormant. Motion at p. 3. Second, Respondent is unable to demonstrate that an alleged 61 month delay in bringing charges against him in any way differentiates him from all other respondents before the Police Board. Witnesses that will be called by both the Superintendent and the Respondent regarding the events of the day in question provided statements to OPS and/or IPRA as part of the CR investigation. These same witnesses testified at the hearing and Respondent cross examined each of them and in certain instances attempted to impeach the witnesses with their IPRA-statements. Respondent had the opportunity to test their memory with their documented statements, which memorialized their recollection of the events when interviewed by IPRA and closer to the date in question.

Respondent was interviewed on June 4, 2007. He was accompanied by counsel of his choosing at that time and before the interview, he was provided a written copy of the charges and allegations, which are the same allegations before the Police Board. Accordingly, he was made aware of the allegations and charges against him approximately three years prior to those charges being filed at the Board. The party who invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. Hannigan, 240 Ill. App. 3d at 1074. Respondent has not proven that laches should apply in this case.



**III. IPRA complied with Chicago Police Department General Orders and its delay in the investigation was not excessive.**

According to M.C.C. 2-57-040(g), IPRA is tasked with following Chicago Police Department general orders. G.O. 93-03, II, C,11, states:

“complete the investigation as soon as possible, but no later than thirty days after the date the complaint was received or on the date of any authorized extension. If the investigation, due to its nature or complexity will require more than thirty days to complete, the investigator will submit a Request for Time Extension form (CPD-44.114) for **each** extension of time to his commanding officer for approval and forwarding to the Internal Affairs Division/Office of Professional Standards. Each time a request for an extension of time is submitted by an investigator, the reason must be clearly justified.” (emphasis in original)

Despite Respondent’s protests to the contrary, the IPRA investigator substantially complied with the requirements established by Chicago Police Department General Order 93-03, titled *Conduct of Investigation*, (attached hereto as Exhibit A) by requesting and being granted several extension requests in order to conduct a complete and thorough investigation of the allegations against Askew. Please see Group Exhibit B for a copy of the handwritten and electronically submitted extension requests. Based upon a close review of Investigator Webb’s investigative log coupled with the Status History (both of which were included in CR No. 1000301 and tendered to Respondent in discovery) it is apparent that Webb made timely extension requests and the investigation does not reflect “massive gaps” as if “no action took place,” as claimed by Respondent. Motion p.4. Respondent erroneously states that “[t]he Department certainly had sufficient time to conduct their investigation from March 24, 2006, the date of the incident and on which date the complaint was made.” Motion p. 2. The date of the incident in question was October 7, 2006, not March 24, 2006, and the CR was initiated on October 7, 2006, and O.P.S was notified on October 8, 2006, by a Sgt. who reported to Holy

Cross Hospital where the complainant, Greg Larkins, was receiving treatment for his injuries.

Respondent asserts that “interviews of important witnesses, including the complainant and occurrence witnesses, were completed rapidly.” Motion p.4. However, a cursory review of the investigator’s log reveals that both Alice Larkins and Greg Larkins gave their statements on October 16, 2006; Etta Perry’s statement was taken June 8, 2009; Norman Perry, Senior’s statement was taken October 26, 2006 and Norman Mitchem’s statement was given November 18, 2009. During the hearing, an issue was made of the dates of the witnesses’ statements relative to the date of the incident. Webb’s investigative log indicates that several attempts were made, both in person and via the telephone, to contact Etta Perry and Norman Perry, Jr./Mitchem, however they failed to appear for their scheduled interviews at various points throughout the investigation. The log indicates that after making a “personal visit” (also documented as “PV”) to Norman Perry, Jr. and Etta Perry on October 26, 2006, the investigator also called Etta Perry and Norman Perry, Jr. on November 14, 2006. The investigator spoke with Etta Perry on November 16, 2006, at 10:00 a.m., and scheduled a November 22, 2006, interview with Etta Perry, which Etta Perry failed to keep. See Page 2 of the investigator’s log. Thereafter, on December 13, 2006, the investigator called Etta Perry and Norman Perry, Jr., and left a voice message. Webb visited the Perry/Larkins home on December 19, 2006, for the second time and no one responded. Id. On January 17, 2007, Webb called Etta Perry and Norman Perry, Jr., again and left a message. Id. Thereafter, Webb sent via certified and first class U.S. mail correspondence to Etta Perry and Norman Perry, Jr., on January 24, 2007, and received the receipt from Etta Perry on January 26, 2007. Id. Webb received a telephone call from Etta Perry on February 2, 2007, and scheduled an interview of Etta Perry for February 6, 2007, which Etta Perry failed to keep. Id. After having received a signed certified receipt from Etta Perry on

March 19, 2007, Webb scheduled another interview with Etta Perry on March 25, 2007 for March 29, 2007, which Etta Perry failed to keep for the third time. See Page 3 of the investigator's log. Norman Perry, Junior's correspondence returned unclaimed on March 23, 2007. Id. During the interim, as reflected on pages 3 through 5 of the investigator's log, Webb continued to move forward with other areas of the investigation. For example, she made multiple requests for evidence technician photographs. After Webb initially ordered the evidence technician photographs on October 16, 2006 (see page 1 of the investigator's log) she continued to request the photos on February 7, 2007 (see page 3 of the investigator's log) and again on March 1, 2007 (id.). Webb also looked for "additional E.T. photos" on May 1, 2007. See page 3 of the investigator's log. Webb also made multiple requests for Greg Larkins' medical records on May 1, 2007 and followed-up on that request by calling the hospital on May 16, 2007, after she initially requested the records on October 20, 2006. See pages 1 and 3 of the investigator's log. Neither the investigator nor IPRA can reasonably be held responsible for the responsiveness or lack thereof, to its attempts to schedule interviews or otherwise procure documents and information. The investigative log indicates with specificity Investigator Webb's attempts to contact witnesses for whom she had knowledge; it also indicates her attempts to canvass the area for other witnesses, the identity of whom were unknown to her. On October 26, 2006 and June 8, 2009, both dates which pre-date her interviews of Norman Perry, Jr./ Mitchem and Etta Larkins, she canvassed the area for other witnesses. See pages 1 and 7 of the investigator's log.

Respondent criticizes the course of the investigation stating that from October and November of 2006, "no significant activity occurred in the investigation until May and June of 2007." Motion p.2. If one characterizes the investigator's attempts to contact and schedule eye-witnesses for interview as "no significant activity" then perhaps Respondent's characterization



may be considered reasonable. It appears that Respondent is focused solely on the dates in which individuals were interviewed as being significant investigative activity, because Sgt. Shinn was interviewed in May 2007. See page 4 of the investigator's log. However, this matter did not lay dormant during that time period as Respondent would have this Board believe. As more fully explained above, in addition to the investigator's multiple attempts to schedule eye witnesses for interviews, she followed up on requests for photographs, an ambulance report, obtained event queries and unit queries all in between her required time out of the office and her earned time off of work. During this time period, Webb was out of the office due to a furlough day or earned time off on: November 23 – 28, 2006 (4 days total) and April 1 – 17, 2007 (16 days total).

From March 2008 through May of 2008, Respondent claims the investigation was only opened to take Sgt. Shinn's statement. Motion p.2. However, it is apparent that the investigator continued to make efforts to secure interviews of Etta Larkins and Norman Perry, Jr. See page 4 of the investigator's log. During this time, Webb was out of the office due to a furlough day or earned time off on April 4 – 15, 2008 (11 days total). Id. at 5. Respondent also criticizes the timeline of the investigation from May 2008 through January of 2011 stating that "[n]othing of any significance occurred in the investigation..." during that time period. Motion p.2. During this time, Investigator Webb was out of the office due to a furlough day or earned time off on: July 3-7, 2008; upon her return on July 16, 2008; she continued to reach out to Etta Larkins and Norman Perry, Jr. Id. at 5. Thereafter, she was out of the office due to a furlough from August 7-28 (20 days total); October 10-27, 2008 (18 days total); November 27-December 9, 2008 (14 days total); December 10, 2008-January 7, 2009 (7 days total); August 9 – September 1, 2009 (13 days total); November 25-30, 2009 (5 days total); December 23 – January 7, 2010 (15 days total); November 24-30, 2010 (5 days total) and December 3-January 11, 2011 (20 days total). Id.

at 6-8. During the interim, Webb continued to follow-up with various leads: she requested "additional crime scene," obtained A & A sheets and prepared a subpoena to be issued to Perry, Jr./ Mitchem. Id. at 7.

According to the log, the investigator first documented "investigation completed case to be summarized for closing" on January 2, 2008. Based upon information and belief, the Superintendent states that the investigator unilaterally determines when the case is ready to be "summarized and closed." A review of the investigative log and the status history indicates that additional work was performed. The investigator's judgment of whether the case is ready to be summarized and closed is reviewed by the supervisor and then by the supervisor's coordinator/deputy. If everyone in the investigator's chain-of-command is in agreement, then IPRA's Chief Administrator must also review the file and concur before the summary is actually finalized and the case is considered closed; this determination will be reflected in the Clear System's Status History, which is attached hereto as Exhibit C. Upon review of the investigator's log, it appears that this process occurred in the instant matter on more than one occasion. Based upon information and belief, after Investigator Webb indicated that the investigation was completed on or near January 2, 2008; February 8, 2008; March 5, 2008; March 20, 2008; May 2, 2008 her superiors determined that additional work should be completed and Webb complied with the direction she was given. During the interim and after this time, Webb made additional requests for time extensions and they were granted. See Exhibit B. Thereafter, on February 3, 2010, Webb determined the investigation was complete; the summary was completed and then reopened for corrections per her superior's direction. Thereafter, upon review of the Status History it appears that the investigation was sent to the investigator's supervisor on April 26, 2010 and then on to the Coordinator on the same day and then in June 22, 2010, it was sent from

the deputy/coordinator to the Chief Administrator. It was with the Chief Administrator until November 18, 2010.

After the case was reviewed by the Chief Administrator, a meeting took place in November of 2010. See the investigator's log. Thereafter, based upon the Status History and upon information and belief, the investigator followed-up on additional direction and the case was sent to the chief administrator from the coordinator for approval on or near November 18, 2010. On November 24, 2010, Webb interviewed P.O. Sutton before taking time off in November and December of 2010, as fully described above. See the investigator's log. Upon the investigator's return, based upon the Status History, the investigator's log and upon information and belief, Webb continued to make corrections to the summary report in January 2011 and it appears that it continued to move up the chain of command through February 2011. See Page 7-8 of the investigator's log.

On February 3, 2011, the investigator sent the case to her supervisor, the deputy/coordinator, for review who sent it back to the Chief Administrator on that same day, February 3, 2011. From February 21, 2011 through March 30, 2011, it appears that the case was reviewed on multiple occasions by the deputy/coordinator and the Chief Administrator until it was closed by the Chief Administrator on April 6, 2011, at which time it was sent to the Chicago Police Department's Internal Affairs Division, where it remained for review until it was escalated on May 31, 2011. See the Status History.

All in all, the process established by the Chicago Police Department to ensure timely investigations for allegations of misconduct was substantially adhered to in this case and does not amount to a failure by IPRA to follow Chicago Police Department general orders or justify the extreme remedy requested by Respondent to have all charges stricken and dismissed.

It must be pointed out that the case cited by the Respondent, Anthony Howell v. City of Chicago Human Resources Board, et.al., 07 CH 28370, Motion pp.4-5, for its contention that “Judge Mary Anne Mason reversed a Board finding that surveillance evidence in a residency case which was 3 to 4 years old at the time the charges were brought should have been excluded from evidence. The court found this contrary to the provisions of the collective bargaining agreement which the employee had which required discipline ‘as soon as practical’ after an alleged violation occurred, as well as on due process grounds” is misleading and not proper. Howell is an unpublished case and therefore not binding, or persuasive authority. Further, Respondent has failed to provide this Board with all of the facts and therefore, this Hearing Officer and/or Police Board should not take notice of, nor rely upon Respondent’s representation since the underlying facts are not readily verifiable. See Muller v. Zollar, 267 Ill.App.3d 339, 341 (1994) (stating that “Illinois courts recognize that documents containing readily verifiable facts capable of instant and unquestionable demonstration may be judicially noticed”). Without considering the entire record in Howell, there is no basis for making a comparison to the instant case. Moreover, orders of the Chancery Division of the Circuit Court of Cook County are non-precedential and do not assist the Police Board in making a determination regarding Respondent’s Motion. Respondent’s representation contains scant facts and fails to establish that there are any similarities between Howell and the instant matters. Therefore, Respondent has no authority to support his argument that an alleged failure to comply with general orders justifies the dismissal of charges.



**IV. Respondent has failed to establish that the underlying CR investigation was governed by Chapter 2-57 of the Municipal Code of Chicago.**

The underlying Complaint Register that is the basis for the charges filed with the Police Board against the Respondent was initiated on or about October 7, 2006, with the Chicago Police Department's Office of Professional Standards ("OPS"). OPS no longer exists but was the forerunner for the establishment pursuant to municipal ordinance of IPRA. Unlike OPS, IPRA is a separate and distinct City department from the Chicago Police Department. Many of the investigations formerly assigned to OPS were transferred to the newly created IPRA based on the jurisdiction granted to it when it was established by municipal ordinance on or about July 19, 2007. The instant CR was one such investigation. No provision of Chapter 2-57 rendered any section of the IPRA enabling ordinance retroactive.

In his Motion, Respondent fails to point out that the ordinance establishing IPRA was not enacted until approximately a year and one-half after the instant CR investigation was initiated by OPS and incorrectly characterizes it as "an additional City of Chicago ordinance governing IPRA investigations." Motion p.5. M.C.C. 2-57 is the only ordinance governing IPRA investigations and confers on the IPRA authority to investigate certain types of allegations of misconduct, including but not limited to, domestic violence, excessive force, coercion, and verbal abuse. M.C.C. 2-57-040(b). Respondent has failed in any way to demonstrate that IPRA was obligated to comply with the notification requirements set out by M.C.C. 2-57-070 for investigations initiated with OPS, specifically investigations that had been ongoing for approximately a year and one-half at the time IPRA was established. Absent this showing, Respondent is unable to demonstrate a violation of the Municipal Code of Chicago, and the Illinois Supreme Court case cited by the Respondent, Duldulao v. St. Mary of Nazareth Hospital



Center, 505 N.E.2d 314 (1987), is not implicated notwithstanding the fact that the Respondent has failed to demonstrate its relationship to the instant matter. Motion p. 5. Respondent is certainly unable to demonstrate that the instant charges should be stricken and/or dismissed.

Further, even assuming for arguments sake that M.C.C. 2-57 applies to the underlying complaint register investigation, a contention the Superintendent rejects, Respondent's argument regarding the alleged ten (10) notifications he was entitled to under M.C.C. 2-57-070 is without merit. Motion p.5. M.C.C. 2-57-070 states,

If the chief administrator does not conclude an investigation within six months after its initiation, the chief administrator shall notify the mayor's office, the city council committee on police and fire, the complainant, and the employee named in the complaint or his or her counsel of the general nature of the complaint or information giving rise to the investigation and the reasons for failure to complete the investigation within six months.

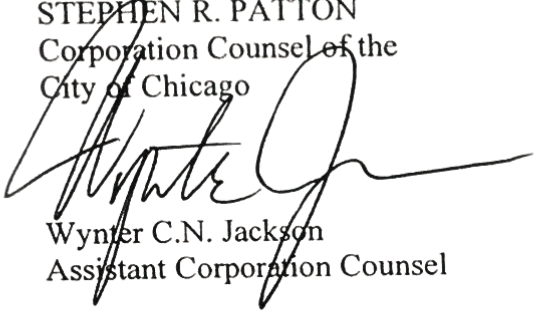
The plain language of the ordinance does not support Respondent's reading of the provision that he was entitled to notice at regular six (6) month intervals. Rather, the provision provides for notice, as specified by the clear language of 2-57-070, if the investigation is not completed within six (6) months.

For all the above reasons, and any additional reasons that the Superintendent may raise during a hearing on the Motion, the Superintendent respectfully requests that the Police Board deny Respondent's Motion to Strike and Dismiss and for any other relief the Board deems just.

Respectfully submitted,

STEPHEN R. PATTON  
Corporation Counsel of the  
City of Chicago

By:

  
Wynter C.N. Jackson  
Assistant Corporation Counsel

30 North LaSalle Street  
Suite 1040  
Chicago, Illinois 60602  
(312) 742-7049(v)



**G.O. 93-03-03**

**Chicago Police Department**

**TITLE:** CONDUCT OF THE INVESTIGATION

**ISSUE DATE:** 13 January 1993

**EFFECTIVE DATE:** 15 January 1993

**DISTRIBUTION:** C

**RESCINDS:**

**I. PURPOSE**

This addendum sets forth certain procedures relative to the manner in which a complaint against a Department member will be investigated.

**II. CONDUCT OF THE INVESTIGATION**

A. The ranking on-duty member of the unit which has initiated an investigation or to which an investigation has been assigned will immediately designate a command or supervisory member of the unit to conduct the investigation. If the accused is a member of the unit assigned to conduct the investigation, the immediate supervisor of the accused will be assigned the investigation unless that supervisor initiated the investigation, and is the complainant, or witnessed the incident which resulted in the complaint being filed, or is on extended medical, or is on furlough. Every effort will be made to ensure that the investigation is conducted in an impartial manner.  
(Item II-A amended, 12 July 1994, General Order 93-03-03A).

B. When copies of the Complaint Against Department Member report (CPD-44.202) relating to a specific complaint are received by the unit which will conduct the investigation, the name, rank or position, star/employee number, unit number and social security number of the member designated to conduct the investigation and the date and time of the assignment will be entered on the reports which will be distributed as follows:

1. Original copy to the investigator.
2. One copy to the investigator's commanding officer.

**G.O. 93-03-03** CONDUCT OF THE INVESTIGATION  
**ISSUE DATE:** 13 January 1993

3. One copy returned to the Internal Affairs Division.
- C. The member assigned to investigate a complaint against a Department member will:
1. contact all complainants and witnesses as soon as possible, ensuring that such complainants and witnesses are not unduly inconvenienced. If repeated efforts to contact a complainant or witness are unsuccessful after three days, the investigator will prepare and send a form letter (CPD-44.223 or CPD-44.224 as appropriate) by certified mail to the person requesting that the investigator be contacted immediately. Form letters and special envelopes for this purpose (Commodity Number 23-3489-5312 certified) are available from the Equipment and Supplies Section. In all instances, the investigator will record each date and time he or any other member designated to assist him in the investigation attempted to contact the person and the means of communication used (telephone, correspondence, personal visit) in the final report of the investigation.
  2. take written statements from complainants and witnesses when such statements will assist him in reaching a sound conclusion in the case. If the allegation is such that a recommendation for separation is unlikely, the statement(s) need not be formal question-and-answer or narrative form. If the allegation is such that the case is likely to result in a recommendation for separation, the statement(s) will be in question-and-answer form.
  3. if the accused is a member of AFSCME he will be afforded the predisciplinary provisions outlined in their collective bargaining agreement. In cases wherein criminal prosecution is not probable this will be understood to mean making available a copy of all investigatory reports/statements concerning the investigation, including the name of the complainant and any witness.
  4. inform the member against whom an allegation has been made, in writing, of the nature of the allegations before any interrogation begins.
    - a. If the allegation indicates that criminal prosecution is not probable against the Department member, the investigator will have the accused member read and sign both a Notification of Charges/Allegations form (CPD-44.115) and an Administrative Proceedings Rights form (CPD-44.105, Rev.10A/92) to



acknowledge that he has received a written copy of the specific allegations made against him and that he has been advised of his statutory rights. These forms will be prepared in duplicate: the original of each form will be placed in the investigative file, and the duplicate copy of each form will be given the accused member. Signing of the forms is not a waiver of rights, it is an acknowledgment that the accused has received a written copy of the specific allegations made against him and that he has been given his rights.

- b. If criminal prosecution is probable against a Department member, the investigator will recite to the accused member his constitutional rights (Miranda warnings) contained within the Criminal Rights form (CPD-44.104) in clear and unequivocal words. The accused member will then read and sign both a Notification of Charges/Allegations form and a Criminal Rights form. These forms will be prepared in duplicate: the original copy of each form will be placed in the investigative file, and the duplicate copy of each form will be given to the accused member. Signing of the forms is not a waiver of rights, it is an acknowledgment that the accused has received a written copy of the specific allegations made against him and that he has been given his rights.
- c. After the appropriate criminal and/or administrative rights forms have been read and signed by the accused member, he will be requested to sign either a Waiver of Counsel section or the Request to Secure Legal Counsel section of the Waiver of Counsel/Request to Secure Counsel form (CPD-44.106, Rev.10A/92). This form will be prepared in duplicate: The original copy will be placed in the investigative file, and the duplicate copy will be given to the accused member.
- d. In the event an accused member refuses to execute any of the forms, such forms will be marked "Refused." The forms will be dated and signed by any witness (es) to the refusal; the exact location (including room number, if applicable) of refusal will be noted, and the forms will be retained in the investigative file. A duplicate copy of the forms will be given to the accused member.
- e. The advice of counsel to decline to answer questions will not excuse an accused member from responding when he has been



properly and lawfully ordered to do so by a member of higher rank.

- f. If the accused member has waived counsel, the investigator will renew the offer of the right to counsel each time an interrogation is resumed. A written record will be made of the waiver of counsel or demand for counsel at each interrogation. A request for a continuance to secure legal counsel will not be permitted to become a tactic to delay or otherwise obstruct the orderly process of the investigation. Each time an interrogation is resumed, the investigator will advise the accused member of the applicable criminal or statutory rights prior to the interrogation.
  - g. If the alleged act is a crime and the evidence is such that had the crime been committed by a private citizen it would have resulted in his arrest, the investigator will explain the circumstances to his commanding officer of exempt rank or, in his absence, the on-duty watch/unit commander who will contact the Assistant Deputy Superintendent, Internal Affairs Division, and Administrator of the Office of Professional Standards, or the on duty assistant deputy superintendent, Bureau of Operational Services. The Assistant Deputy Superintendent, Internal Affairs Division, Administrator of the Office of Professional Standards, or the assistant deputy superintendent, as appropriate, will determine the further action to be taken, consulting the Office of the State's Attorney and appropriate Detective Division personnel for guidance when necessary.
  - h. Upon the completion of the criminal portion of the investigation, the investigator will expressly inform the accused member that the criminal segment of the investigation has been concluded. If an administrative investigation is then to be initiated, the investigator will expressly inform the accused member that any action taken during this segment cannot be used in the criminal investigation. The accused member will also be informed that he must comply/cooperate with the administrative investigation which specifically relates to the alleged misconduct or to the performance of his official duties and that failure to comply/cooperate may result in further disciplinary action.
5. interrogate the accused member-- remaining cognizant of the member's rights as defined in Addendum 1 of this order, the applicable provisions

of any agreement (contract) pertaining to the accused member and the General Order entitled "Interrogations: Field and Custodial" – and other members who have knowledge of alleged misconduct, taking written statements when necessary. If the allegation is such that a recommendation for separation is unlikely, the statement (s) may be in the form of reports from the member(s). If the allegation is such that the case is likely to result in a recommendation for separation, the statement of the accused member will be in question-and-answer form. Joint or duplicate copies of statements or reports will not be submitted.

6. require an accused member to submit a report and answer questions which specifically, directly, and narrowly relate to the alleged misconduct or to the performance of his official duties.
7. ensure that his commanding officer is informed of continuing developments in the investigation. In addition, the investigator will prepare and submit the Notification RE: C.R. Investigation form (CPD-44.217) to his unit commanding officer when additional information relative to corrections, deletions, etc., concerning the accused, complainant, witness or victim is obtained.
8. when the investigation of an allegation, supported by evidence, strongly indicates unfitness for duty, notify his commanding officer of exempt rank.
9. not unduly extend the investigation to include minor infractions which are violations of Rules and Regulations or directives unless the infraction is reasonably related to the original allegation. Infractions which involve violations of the law and other irregularities which are willful, devious, serious in nature, or which involve the integrity of the Department will result in further investigation and recommendations for disciplinary action, if warranted, no matter what the investigation discloses regarding the original complaint.
10. terminate the investigation when it is determined at any time that the complaint is unfounded or the member clearly exonerated. Reports and statements containing information to justify the unfounding or exoneration of the accused will be forwarded in accordance with the provisions of Addendum 4 of this order.
11. complete the investigation as soon as possible, but no later than thirty days after the date the complaint was received or on the date of any

authorized extension. If the investigation, due to its nature or complexity will require more than thirty days to complete, the investigator will submit a Request for Time Extension form (CPD-44.114) for **each** extension of time to his commanding officer for approval and forwarding to the Internal Affairs Division/Office of Professional Standards. Each time a request for an extension of time is submitted by an investigator, the reason for the request must be clearly justified.

12. when the investigation is complete, classify the complaint as one of the following:
  - a. "Unfounded" when the allegation is false or not factual.
  - b. "Exonerated" when the incident occurred but the actions of the accused were lawful and proper.
  - c. "Not Sustained" when there is insufficient evidence either to prove or disprove allegation.
  - d. "Sustained" when the allegation is supported by substantial evidence to justify disciplinary action.
13. before sustaining a complaint, ensure that "just cause" exists to support the allegation. The investigator will consider the following criteria in making this determination:
  - a. The member must have received forewarning or have foreknowledge of possible or probable consequences of his conduct. (This is satisfied by a published rule, regulation, or order made known to Department members.
  - b. A full and fair investigation established that the member did in fact violate or disobey a rule or order of the Department.
  - c. The accused was afforded an opportunity to respond to the allegations.
  - d. The investigation uncovered **substantial** evidence or proof of the allegation against the accused.
  - e. The rules, regulations, orders and penalties have been applied

without discrimination.

14. if the complaint is sustained:

- a. request a copy of the accused member's "Summary of Previous Disciplinary Actions" from the Internal Affairs Division via PAX 0-603.
- b. request a copy of the accused member's "Record of Previous Complimentary History" from the Personnel Division via PAX 0-342.
- c. ensure the disciplinary action recommended is reasonably related to the seriousness of the member's proven offense, and gives appropriate consideration to the member's previous disciplinary and complimentary history.
- d. ensure that the investigative file includes all relevant information and establishes the basis for recommending one of the following actions:
  - (1) Violation noted, no disciplinary action.
  - (2) Reprimand.
  - (3) Suspension for a specific number of days, not to exceed 30.

**NOTE:** *Exempt command members and civilian members exempt from coverage under the overtime provisions of the Fair Labor Standards Act may only be suspended in increments of the designated work week (7 calendar days). For example, suspensions can only be for 7, 14, 21, and 28 calendar days. A disciplinary suspension can never be less than 7 days.*

(Item II-C-14-d-(3) revised, 26 February 2003, General Order 93-03-03C).

- (4) Separation.
- e. specifically state that he has taken into consideration the accused member's previous complimentary history and



disciplinary history when preparing the recommendation for disciplinary action portion on either the Summary Report (CPD-44.112) or the Summary Report Digest (CPD-11.112A). However, the investigator will not enter the accused member's complimentary history or disciplinary history into the narrative of any report. These histories will be utilized as attachments only.

15. forward reports and statements which justify the finding in accordance with the provisions of Addendum 4 of this order.
- D. The commanding officer of the investigating unit is responsible for ensuring a complete and expeditious investigation of the complaint, and he may assign other members of the unit to assist in the investigation when the investigating member is off duty or otherwise unavailable. The commanding officer will periodically check the progress of the investigation and will record the dates of these progress checks on the reverse side of the Investigator's Copy of the Complaint Against Department Member report which is retained in unit files. The commanding officer of the investigative unit may recommend whether the accused member should be:
1. retained in his present assignment;
  2. assigned to other duty where he is under close supervision and has limited contact with the public or other members;
  3. excused from duty; or
  4. immediately suspended.
- E. An accused member may be excused from duty without pay by his commanding officer for a period not to exceed two tours of duty. In unusual situations when an accused member should be excused for more than two tours of duty, such as over a holiday weekend, or when a change of assignment is recommended, permission will first be obtained either from the Assistant Deputy Superintendent, Internal Affairs Division, an Administrator of the Office of Professional Standards, or the on duty assistant deputy superintendent for Operations Command. (In the event an accused member is excused from duty without pay, and the complaint is classified as unfounded, exonerated or not sustained as a result of the investigation, the member will receive pay for the period of time he was excused.) Whenever an accused member is excused from duty, his commanding officer will immediately notify (by telephone and in writing) the Internal Affairs Division or the office of Professional Standards, as



appropriate and the commanding office of the division or bureau to which the accused member is assigned. The commanding officer will also notify (by telephone and via a Personnel Action Request form CPD-11.612) the Director of the Finance Division (for payroll purposes as soon as possible.

Matt L. Rodriguez  
Superintendent of Police

87-028 BW(HEH)

## **G.O. 93-03-03A**      **Chicago Police Department**

**TITLE:**                      **CONDUCT OF THE INVESTIGATION**

**ISSUE DATE:**              12 July 1994

**EFFECTIVE DATE:**        13 July 1994

**DISTRIBUTION:**          C

**RESCINDS:**

### **I.      PURPOSE**

This revision directs the assignment of a complaint investigation to the immediate supervisor of an accused member when the member is assigned to the unit that has been designated to conduct the investigation.

### **II.     Item II-A is amended and will read as follows:**

- A.    The ranking on-duty member of the unit which has initiated an investigation or to which an investigation has been assigned will immediately designate a command or supervisory member of the unit to conduct the investigation. If the accused is a member of the unit assigned to conduct the investigation, the immediate supervisor of the accused will be assigned the investigation unless that supervisor initiated the investigation, and is the complainant, or witnessed the incident which resulted in the complaint being filed, or is on extended medical, or is on furlough. Every effort will be made to ensure that the investigation is conducted in an impartial manner.

Matt L. Rodriguez  
Superintendent of Police

94-064 JJH

**G.O. 93-03-03A CONDUCT OF THE INVESTIGATION**  
**ISSUE DATE: 12 July 1994**

BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO

IN THE MATTER OF CHARGES )  
AGAINST )  
Police Officer Bruce Askew, )  
Respondent )  
)

No. 11 PB 2776

-7 MAR 2012 16 13

**RESPONDENT'S REPLY MEMORANDUM IN SUPPORT OF**  
**MOTION TO STRIKE AND DISMISS**

NOW COMES, Respondent, Bruce Askew, by and through his counsel, William N. Fahy,  
and submits his Reply Memorandum in Support of his Motion to Strike and Dismiss.

Respondent states as follows:

**ARGUMENT**

**RESPONDENT'S DUE PROCESS RIGHTS WERE VIOLATED**

The City argues that this Board should disregard the numerous court decisions finding due process violations based upon unwarranted delay. The City argued that the Superintendent complied with Respondent's Due Process rights by promptly bringing charges against the Respondent following the conclusion of the investigation. (Superintendent's Response, p. 5). The City's argument misses the mark. The Due Process Clause does not permit lengthy delays in investigations. The Circuit Court of Cook County recently considered and rejected the City's argument concluding that a lengthy delay in an IPRA investigation does violate the Due Process rights of the officer. (See attached Order of Circuit Court Judge Kathleen Pantley, *Jason Orsa, et al. v. City of Chicago Police Board*, March 1, 2012 ).

Other than point out that Respondent was "not suspended for the 61 months that the case lay dormant" (Superintendent's response, p. 7), the City fails to cite to any authority to support its

conclusion that cases can lay dormant for years and not violate due process. In contrast, Respondent cited to numerous cases that held that delays less egregious than the delay committed in this case resulted in due process violations. One of those cases was *Morgan v. Dept. of Financial and Prof'l Reg*, 3734 Ill.App.3d 275 (1<sup>st</sup> Dist. 2007). The *Morgan* court found that the 15-month delay did not constitute a "prompt determination" as required by law and reversed the administrative decision. The City argued that *Morgan* should not apply to this case because, "the *Morgan* court's due process analysis centered on the time the plaintiff was without the ability to practice his chosen profession." (Superintendent's response p. 4). Once again, the City could not cite to any authority to support its argument. The City could not offer a single decision to support its argument that due process violations apply only to a delay in the adjudication stage. The reason for this is simple. The due process clause requires that the opportunity to be heard occur at a meaningful time and in a meaningful manner. Respondent was not afforded his due process in this case. He suffered irreparable prejudice as a result of the unreasonable delay and the charges should be dismissed in this case.

#### **Laches does apply to Respondent's case**

The Doctrine of Laches does apply to this case. The Superintendent cites the case of Forberg v. Board of Fire & Police Comm'rs, 40 Ill. App. 3d 410 (Ill. App. Ct. 1st Dist. 1976), a case that is distinguishable to that of Respondent's. In Forberg, the plaintiff was discharged from the Markham Police Department. The plaintiff appealed an order from the District court affirming the Board's decision to discharge him. Forberg, 40 Ill. App. 3d at 410. On his appeal he contended that the Board's decision was invalid because (1) it failed to include findings of fact, and (2) it was barred by laches. Id. Specifically, the plaintiff contended that the discharge was barred by laches *per se* since the incidents in question occurred 11 to 32 months before charges were filed. He argued in the trial court that this delay was prejudicial *per se*. A delay of 39 to 44 months has been held to be prejudicial where the factual disputes involved were solely dependent



upon recollection. Id. at 412 citing Mank v. Board of Fire & Police Commissioners, 7 Ill. App. 3d 478, 288 N.E.2d 49. In Forberg, the court found plaintiff had offered no evidence that he was prejudiced by the delays of this cause nor that the factual disputes were solely dependent upon recollection. In the instant case, the Respondent has been prejudiced by the actions of the Independent Police Review Authority and its failure to follow its own procedures in conducting a prompt investigation. See General Order 93-03 Addendum 3.

In Respondent's case, the factual dispute that served as the basis for the charges is solely dependent upon the recollections of the witnesses. The five civilian witnesses that testified at the hearing were the only civilian witnesses interviewed by IPRA during its investigation. They are all family members that live together at the location of the incident. They lived together at that location in 2006 and still live there now. The two police officers that testified at the hearing and the Respondent were the only other witnesses that were interviewed by IPRA during its investigation. It defies common sense that it would take any more than one month to accomplish those interviews. There is no reasonable explanation for why 61 months were needed to complete those interviews. By unnecessarily delaying this investigation, Respondent suffered very real prejudice. For instance, it would be impossible after 61 months for Respondent to try to locate any independent witnesses that were at the scene. Instead, Respondent was left with the five family members that lived at the location. All of whom talked to each other before they gave any statements to IPRA, discussed their statements after they were given, discussed their testimony before they testified at the hearing, and discussed their testimony after they testified at the hearing. It could not be clearer that this case involves a factual dispute solely dependent upon the recollection of witnesses and this unnecessary delay is prejudicial *per se*.

In People ex rel. Jaworski v. Jenkins, 56 Ill. App. 3d 1028 (Ill. App. Ct. 1st Dist. 1978) the Court stated, "whether laches will operate as a bar depends on the particular facts and circumstances of the case, and it may arise where the voluntary delay prevents the trier of fact from arriving at a fair conclusion, as where evidence has been lost or obscured or conditions have so changed as to make enforcement of the alleged right inequitable." *citing* Monroe v. Civil Service Com. (2d Dist. 1965), 55 Ill. App. 2d 354, 204 N.E.2d 486. In Respondent's case laches should operate as a bar to charges brought against Respondent since a fair conclusion is unable to be reached by the Board in this case. Due to the passage of time, potential eyewitnesses to the event, other than the family members that testified, may have been located and called as independent witnesses. Moreover, due to the passage of time, the memories and recollections of all of the witnesses that testified for the Superintendent were questionable at best. Therefore, the unnecessary delay prevents the Board from arriving at a fair conclusion to the factual dispute.

In their Response, the city spends a great deal of time trying to establish that the delay from October 7, 2006\*, to January 2, 2008, when the Investigator indicated the investigation was complete, was reasonable. Sadly, that still was almost 4 years before charges were filed against the Respondent. Even that 14 month delay before the investigation was initially closed was unreasonable. If the Investigator wanted to interview one or two of the family members of the complaining witness that missed an appointment, she could have driven the short distance to the home at 64<sup>th</sup> & Marshfield where they all lived. The delays that occurred in 2008, 2009, 2010 and 2011 are absolutely inexcusable.

---

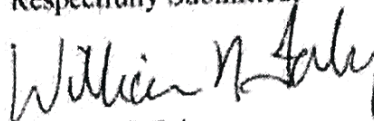
\* Respondent apologizes for inadvertently typing March 24, 2006 as the date of the incident on page 2 of initial motion to strike and dismiss.



The Superintendent, by choosing to wait 61 months to bring charges against Respondent, caused a very real prejudice to the Respondent. The City failed to follow its own policy and ordinances that govern these investigations and is unable to offer any reasonable explanation for the delay. The charges should be barred as a matter of law.

WHEREFORE, for the foregoing reasons the Respondent respectfully requests his Motion to Dismiss be granted.

Respectfully Submitted,

  
William N. Fahy

William N. Fahy  
Attorney for Respondent Bruce Askew  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
(312) 655-1100

# ATTACHMENT



As the Petitioners were receiving their orders and taking a seat at a table near the back door a man by the name of Obed Deleon entered. He was wearing a baggy power-blue T-shirt and a ball cap that was cocked to the right. Deleon admitted that he was a member of the Spanish Cobras street gang. Members of the Spanish Cobras cock their hats to the right. Deleon did not get in line, but rather stood in an open area near the line and near where Petitioners were eating loudly complaining about some a--h--- who had parked a car blocking the driveway entrance to the Taco Burrito King parking lot. He walked over to the line of customers that had formed long enough to complain about the situation to two customers (Shawn Nelson and Joseph Mularczyk), but then quickly moved out of line and continued to loudly talk in an open area.

Apparently, Deleon was upset that he had to park his car somewhere other than the parking lot. After he parked his car, he walked through the lot to get to Taco Burrito King and noticed that some of the cars had FOP stickers on them.

There is a factual dispute as to what Deleon was saying. Deleon and the two customers to whom he complained testified that Deleon continued to complain about the owner of the car who blocked the driveway. Nelson and Mularczyk testified that Deleon kept referring to the owner of the car as an "a--h---."

Petitioners and Walsh, on the other hand, testified that Deleon began shouting at them as they were seated. Deleon said that he was a "cop killer" and a Spanish Cobra. They also testified that Deleon threatened to "cap" someone. Overall, Deleon made threats directed to them as they were trying to eat. Murphy was wearing his uniform pants and his gun was holstered. When Deleon first entered the restaurant, Murphy immediately moved to the table before picking up his food because he did not want Deleon to see that he was a police officer. Deleon continued to use obscenities and make threats. He began to hover around the table at which Petitioners were



seated along with McNamara and Walsh and directed his comments to the men. At that point, according to Murphy, he feared for his safety, drew his weapon, and attempted to subdue Deleon by pushing him against a wall. Once Murphy confirmed that Deleon did not have a weapon, he holstered his gun. Murphy also identified himself as a police officer and pulled out his star.

A fight ensued between Murphy and Deleon. Orsa, Walsh, and McNamara came to Murphy's aid and Deleon was eventually held on the ground. A Taco Burrito King security guard also started to intervene, but did not get involved in subduing Deleon because Murphy had identified himself as a police officer. The security guard, Len Villareal, testified that he saw Murphy pull out his star at the same time he was identifying himself as a police officer.

The Chicago Police arrived shortly thereafter, including Danielson who was a sergeant at the time and Officer Bukowski who was one of the first officers to enter the Taco Burrito King. Sgt. Delahanty was the first sergeant on the scene and he is depicted in the videotape. All the responding officers were in uniform.

Officer Bukowski saw that Deleon was still kicking and thrashing about despite being held by the Petitioners. Officer Bukowski did not want Deleon to harm him and when he realized that Deleon would not calm down, Bukowski told Deleon that he would have to handcuff him even though Deleon was not under arrest. Deleon was screaming obscenities at Bukowski, including a statement that Deleon would "f--- [Bukowski's] mother to death", a statement that Bukowski clearly recalled because his mother had recently died of cancer. Deleon's actions and comments caused Bukowski a considerable amount of stress.

Deleon was eventually arrested along with Nelson and Mularczyk. Deleon testified that he suffered some soreness and bruising (which was not apparent on any photographs) as a result of the altercation.



Orsa and Murphy contend that their due process rights were violated as they were not charged with any misconduct until fifty-one (51) months after the incident. They also contend that the doctrine of *laches* applies. Petitioners also contend that Municipal Code section 2-57-070 and General Order 93-03 were violated, thereby entitling them to dismissal.

An investigation into this incident was opened a few days after the occurrence. As of March 29, 2006, the investigator assigned to the case had a copy of the videotape. On April 10, 2007, Murphy gave a statement. Also in April 2007 the investigator took statements from other officers who were on the scene. On May 3, 2007 a second statement was taken from Murphy. On June 29, 2007 a statement was taken from Orsa.

In June 2008 the investigator turned in the file and indicated, "investigation complete". In January 2009, the investigator received the file back and was told that additional work was to be completed. In October 2009, the investigator turned in the file and indicated, "investigation complete." Petitioners were not charged until July 2010 and the hearing was conducted throughout the fall and winter months of 2010.

Orsa and Murphy filed a Motion to Strike and Dismiss at the administrative level arguing that the four-year, three-month delay between the March 24, 2006 incident and the July 2010 suspensions required dismissal due to violations of the due process clause, *laches*, General Order 93-03, and Municipal Code 2-57-070. The Board rejected their arguments and denied their Motion to Strike and Dismiss.

A reviewing court may entertain questions of fact and questions of law on administrative review. When reviewing questions of fact, it is not the court's function to resolve factual inconsistencies or weigh the evidence to determine where the preponderance of the evidence lies. *Launius v. Board of Fire & Police Comm'rs*, 151 Ill. 2d 419 (1992). A reviewing court does not

reweigh the evidence or substitute its judgment for that of the agency. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 210 (2008). The court must evaluate whether the administrative agency's factual determinations are against the manifest weight of the evidence—that is, whether the opposite conclusion is clearly evident. *Id.* Questions of law are afforded less deference and are to be reviewed under a *de novo* standard. *Swoope v. The Retirement Bd. of the Policeman's Annuity and Benefit Fund of the City of Chicago*, 752 N.E. 2d 505, 529 (1st Dist. 2001). An agency is, however, presumed to make informed judgments based on its experience and expertise and as such, substantial deference is given to its interpretation of a statute. *Id.*

"The Due Process Clause requires provisions of a hearing 'at a meaningful time.'" *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 547 (1985). As noted by Justice Brennan, "Today the Court puts to rest any remaining debate over whether public employers must provide meaningful notice and hearing procedures before discharging an employee for cause. As the Court convincingly demonstrates, the employee's right to fair notice and an opportunity to 'present his side of the story' before discharge is not a matter of legislative grace, but of 'constitutional guarantee.'" *Id.*, at 541, 546, 551, Brennan, J concurring in part, dissenting in part. The due process clause also requires that the opportunity to be heard occur "at a meaningful time and in a meaningful manner". *Lyon v. The Dep't of Children and Family Services*, 209 Ill.2d 264, 277 (2004), quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

In this matter, the Board rejected Orsa and Murphy's due process challenge on the grounds that they were complaining about the length of the investigation rather than the length of time it took to adjudicate the matter. (Findings p. 3). The Board found that this matter was therefore unlike the situations in *Lyon* and *Morgan v. Dep't of Financial and Prof'l Reg.*, 374

Ill.App.3d 275 (1st Dist. 2007) where the lengthy delay concerned the adjudication of misconduct rather than the investigation.

The Board's finding, however, misses the point. The due process clause is not to be so narrowly construed so as to permit lengthy delays in investigations. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Stull v. The Dep't of Children and Family Services*, 239 Ill.App.3d 325, 335 (5th Dist. 1992). It does not require a specific time frame in which to provide a hearing but requires a hearing at a meaningful time. *Id.* See also *Cavarretta v. The Dep't of Children and Family Services*, 277 Ill.App.3d 16, 25-26 (1996).

There has been legislative and administrative concern about the lengthy delays in these types of cases. The City Council passed Municipal Ordinance 2-57-070 which requires that the Independent Police Review Authority (IPRA) conclude the investigation within six months or report the reasons for not concluding it to the Mayor, the City Council, the complainant, and the officer. On the administrative side, Chicago Police Department General Order 93-03 requires prompt investigation, within thirty days. This deadline can be extended by request of the investigator.

The Superintendent essentially conceded both at the administrative level and at oral arguments here in court that the lengthy delay could not be explained. Though the Superintendent claims in a conclusory fashion that the case was complicated, the complexity of the case does not excuse such a delay. The Superintendent has never pointed to any facts which support his contention that the facts were so complicated that the delay was warranted. The Board itself, in adopting the Superintendent's argument on this point, made no factual findings



about the complexity of the case. Moreover, if this case was complicated for the Superintendent to prosecute, then it was complicated for the Petitioners to defend.

The log notes of the investigator reveal no explanation for the lengthy delay nor do the notes explain the reasons for the twenty-three requests for an extension. Moreover, the twenty-three extensions given to the investigator to complete additional work, even if the extensions were for more than thirty days, do not explain the lengthy delays between June 2008 (when the investigator initially indicated that the investigation was closed) and January 2009 (when the case was reassigned to the investigator) nor do they explain the lengthy delay between October 2009 (when the investigator closed the file for a second time) and July 2010 when the Petitioners were eventually charged.

The investigator obtained a copy of the videotape upon which the Superintendent heavily relied within days of the incident. The identities of Nelson and Mularczyk were immediately known to the investigator because they were arrested that morning and reports were filled out with their correct names and addresses.<sup>1</sup> The investigator also discerned the identity of the store manager who called 911 and the identity of two of the cooks within a short period of time. The investigation went dormant for months at a time. At one point, in June 2008, the investigator noted "investigation complete" and turned in her file. In January of 2009, the case file was returned to her to conduct additional work. In October of 2009, the investigator once again indicated that the investigation was complete, but Orsa and Murphy were not served with charges until July 2, 2010. There is absolutely no explanation as to reason for the delay between the time the investigation was finally closed and the charging date. Thus, given the Superintendent's concession and the administrative record, the Court finds that the delay was unreasonable.

<sup>1</sup> Neither Nelson nor Mularczyk used an alias or gave any false information.



The Board also makes short shrift of Orsa and Murphy's claims of prejudice with regard to the delay. The Board found, "The Respondents' alleged prejudice in this matter is speculative. For example, even if they were advised of the allegations within thirty days, could they really have tracked down any of the patrons in the Taco Burrito King? If they were notified of the allegations within sixty days, would the responding officers really have remembered the details (e.g. whether any of the officers mentioned they were Chicago police officers)?"

Additionally, the Board specifically found that DeLeon did not threaten any of the respondents or anyone else in the restaurant. (Findings p. 7). The Board also credited the "disinterested and very compelling testimony" of Nelson and Mularczyk, "who testified that Mr. DeLeon did not act or speak in a threatening manner to anyone in the restaurant." (*Id.*) The Board specifically did not rely on the testimony of DeLeon (Findings p. 8). The Board also found that Murphy and Orsa had made false reports with regard to the statements of DeLeon. The Board found that Murphy had unlawfully and/or unnecessarily used and/or displayed his weapon. The Board found that Murphy and Orsa had engaged in an unjustified and verbal or physical altercation. In short, the Board accepted the testimony of Nelson and Mularczyk in making its findings.

The Court has reviewed the videotape numerous times and has reviewed the record, including the transcript of proceedings. The delay herein substantially and actually prejudiced Orsa and Murphy.

The videotape and other evidence clearly support Murphy and Orsa and their witnesses' recollection of events. Though the Superintendent claims that the Board correctly credited the testimony of Nelson and Mularczyk as to what DeLeon was saying and doing, the videotape does not support the testimony of Nelson and Mularczyk.

Deleon entered the Taco Burrito King with no intention of getting something to eat. Instead of getting in line, he stood in an open area by the Plaintiffs' table and began yelling. He briefly walked over to Nelson and Mularczyk and said something to them, but he did not remain in line to place an order. Instead, he walked back near Plaintiffs' table and kept carrying on. At one point he flashed gang signs. He also hovered over Plaintiffs' table and said something to those seated there. His manner was aggressive. He was also wearing a baggy T-shirt and kept his right hand in his pocket for the most part, thereby suggesting that he was armed.

Thus, the videotape corroborates the testimony that Deleon was threatening to "cap" somebody, yelling "Cobra Love" and other gang slogans; yelling "cop killer", "f--- the police"; and generally making statements designed to provoke and inflame the officers. Deleon admitted that he told the OPS investigator that, as he walked through the parking lot on the way into the restaurant, he noticed the FOP stickers on the backs of some cars. Murphy testified that he was wearing his uniform cargo pants and his gun was in its holster. Given Murphy's attire, it would have been easy for anyone to see that he was an officer. The videotape confirms Murphy's testimony that he was concerned that Deleon would notice his attire because the tape shows that he sat down without getting his food order.

Though the Superintendent argues that the other customers were not alarmed by Deleon, the videotape does not support this contention. Instead, some customers were pointedly ignoring Deleon. At one point a man in a gray sweatshirt leaves his chair in an apparent attempt to confront Deleon. It is apparent from the tape that Deleon was trying to provoke a reaction and focused on the Petitioners. No one came to Deleon's defense, a fact which supports the Petitioners' contention that the other customers were alarmed by Deleon's actions, not the



officers' reactions. Even Nelson, who the Board found to be a credible witness, testified that a couple of people reacted to Deleon by turning and looking at him and speaking to him.

Moreover, despite Deleon's protest that he was no longer a Spanish Cobra, he wore his ball cap cocked to the right and he admitted that the Cobras wear their ball caps in that fashion. He had three tattoos which evidenced his participation in the gang. During his testimony, he tried to downplay the Spanish Cobras as merely "a group of people from the neighborhood where [he] grew up." He also testified that he did not "see" the Spanish Cobras as a street gang as whether they are a street gangs "[d]epends on what's (sic) your perspective". These obvious lies corroborate the Petitioners' case, not the Superintendent's.

Moreover, Deleon's credibility was severely impeached. He had four felony convictions at the time he testified. Three of the felonies were for possession of a controlled substance and the fourth was for aggravated battery to a police officer. Overall, Deleon's testimony was evasive, impeached, and inherently incredible. Though the Board did not rely on Deleon's testimony, it should have considered it to the extent that it corroborated the Petitioners' case.

Deleon continued to act in an aggressive and profane matter toward others after the physical altercation, a fact which also corroborates the Petitioners' case. Bukowski testified that Deleon made many profane, abusive comments to Bukowski, including the highly abusive, profane, and inflammatory comment that he "would f--- [Bukowski's] mother to death". In short, the evidence establishes that Deleon was a violent, profane, and dangerous individual who fought, kicked, and lashed out at men he knew to be armed law enforcement officers.

The Superintendent basically echoes the Board's dismissal of the Plaintiffs' complaints about the delay by arguing that their position that "counter evidence" could be found is

speculative. (Resp. p. 19). However, evidence that patrons of the restaurant could have easily been found had the charges been brought in a timely fashion is present on the videotape.

The tape shows two men wearing Cubs ball caps with the bills in facing backwards placing an order about the same time that Deleon entered Taco Burrito King. The men are together. One of the men paid for both orders with a credit card and he signed the credit card slip. After paying, they stepped to the side, leaned up against the kitchen counter, and turned to watch while Deleon was yelling. They also watched the beginning of the physical altercation. They then ran into the vestibule by the front door and watched from behind the glass entrance door. After the altercation ended, they went back to the counter and waited for their food.

These patrons could easily have been witnesses favorable to Murphy and Orsa given their close proximity to the occurrence and the aftermath. They were in a position to both hear and see what was occurring. It is apparent from the videotape that they were paying attention to what was occurring. Had the Superintendent brought these charges in a timely fashion, Murphy and Orsa could have subpoenaed Taco Burrito King to produce any and all credit card receipts during the relevant time period. Plaintiffs could have tracked these patrons through the credit card slip and interviewed them at a time when they had a fresh memory about the occurrence. Needless to say, even if Murphy and Orsa had successfully tracked them down in 2010, their testimony of what occurred would have been subject to attack because they would have been testifying about matters that occurred many years before. It is also probable that these witnesses would not have had a good recollection of what occurred or what was said.

Moreover, a witness named Jennifer Kamieniak called 911 to report the incident as she and her friends were eyewitnesses to the event. When the IPRA investigator went to speak to her, she indicated that she did not want to give a statement to IPRA nor did she want to give the



names and/or contact information of her friends. Though these non-answers were acceptable to IPRA, had Petitioners been charged in a timely fashion, their investigator may have been able to get information. The fact that Kamieniak did not wish to deal with IPRA does not mean that she did not wish to deal with the defense. The fifty-one month delay hampered any ability to get reliable statements from Kamieniak and her friends.

Petitioners were also deprived of the testimony of Sergeant Delahanty who was one of the first officers on the scene and who is depicted in the videotape. The IPRA investigator did not even attempt to schedule his interview until November 2007, one and one-half years after the incident. Ultimately, she was not able to obtain a statement because he had retired. Thus, no substantially contemporaneous interview with Delahanty exists. Had Petitioners been able to track Delahanty down in 2010, they would have been hampered in any ability to get a reliable statement from him given the inordinate delay.

Thus, the Superintendent's position (and the Board's finding) that witnesses could not be located is not supported by the evidence. Moreover, other patrons may have paid with a debit or credit card, thereby allowing the parties to discover who else may have been present at the relevant time; however, any testimony by these witnesses would also be subject to the same attack as the customers in the Cubs ball caps.

Also, Murphy testified that he identified himself as a Chicago police officer. The security officer for Taco Burrito King, Villareal, corroborated this testimony. Villareal did not see the events or hear Deleon's comments leading up to the physical altercation because he was at the front of the restaurant trying to prevent another fight that was breaking out at the front. However, he saw that when Murphy pulled his gun, he also pulled a badge. When Villareal went

to investigate, Murphy stated "I am a police officer", Villareal then "backed off". The videotape corroborates Villareal's testimony.

Nelson and Mularczyk were not disinterested witnesses. Both were arrested and both believed that they had been unfairly arrested. Any bias they had would have been against the Petitioners. Mularczyk explored the option of suing. Moreover, their testimony was contradicted by other witnesses and the videotape.

Nelson claimed that when Deleon entered the restaurant he "seemed relaxed" and that he was not obnoxious. However, the video clearly shows that Deleon is pacing, not getting in line to order food, flashing gang signs, and hovering over Plaintiffs' table. Nelson also testified that Deleon used the word a—h— to describe the driver of the car who blocked the entrance, a word which contradicts Nelson's own testimony that Deleon was not obnoxious. Though Nelson claims that Deleon was not speaking loudly, he admitted that Deleon was speaking loudly enough that everyone in the restaurant could hear what Deleon was saying. Also, Nelson testified that Deleon may have said things that he did not hear. Indeed, even Deleon admitted entering the restaurant and demanding to know, "Who is the a—h— blocking the lot?".

Nelson also testified that after Deleon ended up on the ground it appeared that he "gave up" or was unconscious. Nelson also claimed that Deleon was not kicking anyone when he was down on the ground. However, Nelson admitted that at one point while he was in the kitchen his view was obstructed. Moreover, both Bukowski and Villareal testified that Deleon continued to try to fight and kick while he was on the ground. Bukowski had to handcuff Deleon because Bukowski feared for his own safety given how Deleon was trying to strike out at people.



Nelson was also impeached by a statement he gave to the investigator. In that statement, Nelson never indicated that he saw any of the individuals kick Deleon even though at the hearing he claimed to have seen Deleon being kicked.

Mularczyk's testimony suffered from many of the same deficiencies as Nelson's. He indicated that Deleon was talking in a "conversational" tone of voice and that he was also speaking in an "inquisitive" voice, testimony that is clearly contradicted by Deleon's actions as portrayed on the tape, the other patrons' reactions, Nelson, Petitioners, and Petitioners' witnesses. Mularczyk admits that when he was in the kitchen he could not see what was occurring for about one minute. Given that the fight lasted less than one minute, Mularczyk did not see much of what occurred.

In any event, the testimony of Mularczyk and Nelson contradicts the testimony of Petitioners and their witnesses.

In short, the unreasonable delay substantially and actually prejudiced Orsa and Murphy. This is a close case because of conflicting testimony and for other reasons. The videotape does not have any sound so the Board had to rely on witness recollection to determine what was said. The lengthy delay stopped Murphy and Orsa from investigating and possibly finding independent witnesses inside the Taco Burrito King who had a good recollection of what occurred. It also stopped them from being able to independently interview the responding officers who would have had a good recollection of the incident immediately after it occurred. Interviewing these officers years after the fact was essentially useless because the officers would have made many arrests and been involved in many incidences since this incident, the exception to this being Bukowski. One of the reasons that Bukowski had a good recollection was due to the fact that Deleon had made foul and disgusting comments about Bukowski's mother (who

recently had died of cancer). However, none of the other officers appears to have been involved to the extent that they would have remembered this incident to any great degree of certainty.

The Board did not give any weight to the strong legislative and administrative judgment that charges should be brought in a timely fashion. The Board looked at the Municipal Code, section 2-57-070 and rejected Petitioners' arguments on the grounds that this section was not retroactive because it did become effective until July 19, 2007. The Board also found that the section did not require dismissal as a remedy even if it was violated. The Board also rejected Petitioners' reliance on General Order 93-03 and found that the requests for extension were justified because the case was complicated (without citing any facts as to what made this case so complicated).

The Board's findings miss the point. Even if section 2-57-070 is not retroactive and even it does not state that the remedy for a violation is dismissal, the time constraints in this section reflect the judgment of the legislature as to what constitutes a reasonable length of time in which IPRA must complete an investigation. General Order 93-03 reflects the judgment of the agency as to what constitutes a reasonable length of time in which IPRA must complete an investigation.

Both the Code provision and the General Order are particularly strongly worded. Under the Code, if the investigation is not complete within six months the Chief Administrator of IPRA must explain the reasons for not concluding the investigation to the executive branch (the Mayor of the City of Chicago), the legislative branch (the City Council), the complainant, and the officer. It is apparent from the language of the ordinance that the City Council was extremely concerned about the effect of lengthy delays on the officer's ability to defend himself or herself because the officer is one of the people to whom the Chief Administrator must give an explanation as to the reason for the delay. General Order 93-03 also is concerned by the effect of



delayed investigations on the ability of the officer to defend himself or herself because it demands "prompt, thorough investigations [that] will be conducted into allegations of misconduct, [in order to] establish facts which absolve the innocent and identify the guilty." Given these strong legislative and administrative pronouncements, Petitioners' procedural due process rights were violated when the time constraints were egregiously ignored. *Cavarretta*, 277 Ill.App.3d at 25-26.

The doctrine of *laches* also applies. A suit is barred by *laches* where there is: (1) conduct on the part of the defendant giving rise to the situation of which complaint is made and for which the plaintiff seeks a remedy; (2) delay in asserting the plaintiff's rights, the plaintiff having had notice or knowledge of defendant's conduct and the opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the plaintiff would assert the right on which plaintiff bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the plaintiff. *O'Brien v. Meyer*, 281 Ill. App. 3d 832, 838 (1st Dist. 1996). This doctrine has been applied to administrative actions. *Mank v. The Board of Fire and Police Commissioners*, 7 Ill.App.3d 478, 485-86 (5th Dist. 1972).

The *Mank* opinion is particularly instructive. In *Mank* the charges were filed from 39 to 44 months after the incidents occurred. *Id.* There was conflicting testimony as to what occurred and the testimony depended upon recollection. *Id.* Several witnesses were not available. *Id.* The appellate court found, "The length of time above would be sufficient to cause prejudice where the factual dispute is solely dependent on recollection." *Id.*

This matter is similar as the length of time for charging is 51 months; there was conflicting testimony; and the testimony depended upon recollection. As noted above, several witnesses could easily have been traced if the charges were brought in a timely fashion. Though

the parties here have the benefit of the videotape, there is no audiotape. What was said is a crucial issue towards resolution of this matter. As detailed above, the lengthy delay prejudiced Murphy and Orsa because it deprived them of the ability to locate and call witnesses. Moreover, the Superintendent cannot take contrary positions, i.e. that the delay was necessitated by the complexity of the situation, but that the videotape is all that is necessary to resolve the issues. No trier of fact could reach a fair conclusion because the evidence in this case has been obscured. *Id.*

Though some of the charges arise from Murphy and Orsa's failure to submit a Tactical Response Report after the incident, the lengthy delay contributed to prejudicing any defense that they might have for those charges. Murphy and Orsa were separated from the Department as a result of all of the charges. Even if Murphy and Orsa were to have been found to have violated their duties by failing to submit a TRR, the penalty for their failure to submit a TRR may have been vastly different had the Board concluded that their actions in Taco Burrito King were justified.

Moreover, as the appellate court noted in *Mank*, *laches* may arise where the conditions have so changed as to make enforcement of the alleged right inequitable. *Id.* During the period of delay, both Murphy and Orsa continued to serve the Chicago Police Department and the citizens of Chicago honorably and without charges of any misconduct. The Department continued to rely on their efforts as neither was assigned to desk duty or minor tasks during the period of delay. Certainly, had the Superintendent reasonably thought that Murphy and Orsa were dangerous or so lacking in ability that they needed to be terminated from working for the Department, action would have been taken sooner.

Danielson raises some different issues. Danielson was charged with violating Rules 2 and 10 of the Chicago Police Department's Rules of Conduct. The Superintendent sought a 60 day

suspension. Rule 2 prohibits bringing discredit upon the Department and Rule 10 prohibits inattention to duty. The specifications for each violation state that Danielson "failed to conduct a thorough preliminary investigation of the incident inside the Taco Burrito King". The Board's Findings and Decision, however, states that he violated Rules 2 and 10 because he failed to supervise his subordinates and make sure they conducted a thorough preliminary investigation. (Findings p. 35). He was also found guilty because of a failure of "leadership" on his part. Finally, he was suspended for a period of 180 days.

Though the Court does not expect that the charges will be drawn with the same precision required of pleadings in a judicial action (*see generally, Morgan*, 388 Ill.2d 633), Danielson was entitled to be reasonably apprised of the case against him so as to be able to intelligently prepare his defense. A review of the record shows that Danielson prepared his defense on the premise that he was being called upon to answer charges of failing to conduct a thorough preliminary investigation rather than failing to supervise his subordinates.

The Court would note the irony of the Superintendent's position regarding Danielson's actions vis-à-vis this entire case. Obviously, the basis of charges that a thorough preliminary investigation has not been conducted rests on the premise that a thorough preliminary (i.e. timely and contemporaneous) investigation is needed to identify witnesses and gather information so that the truth of what occurred can be ascertained. Here, the Superintendent sought a suspension of Danielson for failing to conduct a thorough preliminary investigation while at the same time taking the position that Murphy and Orsa should not be heard to complain that their rights were violated because the inordinate delay stopped them from conducting a thorough, timely, and contemporaneous investigation into matters which could have aided their defense.



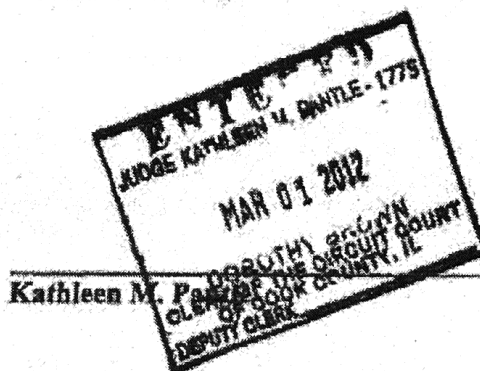
Finally, the Board's finding of guilty to the charge of a failure to supervise the preliminary investigation is contrary to the manifest weight of the evidence. The first supervisor on the scene was Delahanty. Delahanty and Officer Babich entered the restaurant after Bukowski to assist him with Deleon, who was still struggling. Bukowski turned over Deleon, Nelson, and Mularczyk over to Delahanty and Babich. Bukowski transported Walsh to the station to sign complaints and was going to leave thereafter to attend a scheduled weapons qualification course. Delahanty, however, instructed Bukowski that he was not to leave and assigned Bukowski to prepare the case report.

It is clear from these facts that Delahanty was the supervising officer, not Danielson. Delahanty directed the officers with regard to the procedures to follow on the scene, not Danielson. Given Delahanty's actions, Danielson could easily have reasonably believed that Delahanty was the supervising officer, not him. Finding an officer guilty and suspending him for six months based on that officer's reasonable interpretation of the facts and circumstances is against the manifest weight of the evidence.

The decision of the Board is reversed as to all Petitioners.

This is a final Order disposing of all matters in this litigation.

DATE: March 1, 2012





BEFORE THE CITY OF CHICAGO POLICE BOARD

ORIGINAL

IN THE MATTER OF CHARGES )  
FILED AGAINST ) Case No. 11 PB 2776  
P.O. BRUCE ASKEW )

30 North LaSalle Street

Suite 1220

Chicago, Illinois 60602

November 17, 2011

10:00 a.m.

PRESENT:

THOMAS E. JOHNSON, Hearing Officer

MAX CAPRONI, Executive Director

WYNTER C.N. JACKSON, Esq.  
Assistant Corporation Counsel  
on behalf of the Superintendent

WILLIAM N. FAHY, Esq.  
on behalf of the Respondent.

REPORTED BY: Verla A. Todd, CSR  
License No. 084-003498

1 HEARING OFFICER JOHNSON: So then that brings  
2 us to the case, first time up, of Police Officer Bruce  
3 Askew, 11-2776.

4 MS. HARRIS: Wynter Jackson on behalf of the  
5 Superintendent.

6 MR. FAHY: Good morning. My name is Will  
7 Fahy, F-A-H-Y. I represent Police Officer Askew.

8 HEARING OFFICER JOHNSON: So this is the first  
9 time up, and there is a motion for discovery.

10 MS. JACKSON: We need another status date. I  
11 have the motion. I haven't responded.

12 HEARING OFFICER JOHNSON: Okay. So do you  
13 want to say -- is December 9 too soon?

14 MR. FAHY: December 9 would be fine.

15 HEARING OFFICER JOHNSON: Or if you're going  
16 to be here the 12th or the 15th, those are fine, too.

17 MR. FAHY: The 9th actually works better if  
18 it's okay. Is that okay?

19 MS. JACKSON: That's fine.

20 HEARING OFFICER JOHNSON: So let's put Askew  
21 down for December 9 at 10:00 for status.

22 (End of status hearing)  
23  
24

1 STATE OF ILLINOIS }  
2 } SS:  
3 COUNTY OF C O O K }

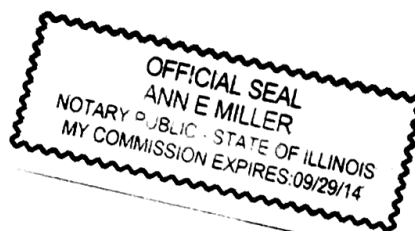
4 I, Verla A. Todd, a Certified Shorthand  
5 Reporter doing business in the City of Chicago, County  
6 of Cook, and State of Illinois, do hereby certify that I  
7 reported in shorthand the proceedings of said hearing as  
8 appears from my stenographic notes so taken and  
9 transcribed under my direction and control.

10 IN WITNESS WHEREOF, I have hereunto  
11 set my hand at Chicago, Illinois, this 5<sup>th</sup> day of  
12 December, A.D. 2011 .

13  
14 Verla A. Todd  
15 Certified Shorthand Reporter  
16 Illinois CSR License No. 084-003498

17  
18 SUBSCRIBED AND SWORN TO  
19 before me this 5<sup>th</sup> day  
20 of December, A.D. 2011

21 Ann E. Miller



BEFORE THE CITY OF CHICAGO POLICE BOARD

ORIGINAL

IN THE MATTER OF CHARGES )

FILED AGAINST ) Case No. 11 PB 2776

P.O. BRUCE ASKEW

30 North LaSalle Street

Suite 1220

Chicago, Illinois 60602

December 9, 2011

10:00 a.m.

**PRESENT :**

THOMAS E. JOHNSON, Hearing Officer

MAX CAPRONI, Executive Director

WYNTER C.N. JACKSON, Esq.  
Assistant Corporation Counsel  
on behalf of the Superintendent

WILLIAM N. FAHY, Esq.  
on behalf of the Respondent.

REPORTED BY: Verla A. Todd, CSR  
License No. 084-003498



1 HEARING OFFICER JOHNSON: We have the case of  
2 Police Officer Bruce Askew, 11-2776.

3 MS. JACKSON: Good morning. Wynter Jackson  
4 for the Superintendent.

5 MR. FAHY: Good morning, Mr. Johnson. My name  
6 is Will Fahy, F-A-H-Y. I represent Officer Askew. I  
7 acknowledge receipt of discovery. It was tendered  
8 today. I was going to suggest that we set a hearing  
9 date at this point.

10 HEARING OFFICER JOHNSON: All right. Let's go  
11 off the record for a second and see what dates would work.

12 (Discussion off the record)

13 HEARING OFFICER JOHNSON: Let's go back on the  
14 record.

15 After an off-the-record conversation  
16 amongst counsel and myself, we have decided to set this  
17 matter for February 17 at 2 p.m. for a prehearing  
18 conference and then on February 23 and 24 beginning at  
19 10 a.m. for hearing, and if there is some huge problem  
20 with proceeding on the 24th -- the city has graciously  
21 set that date, and if there is some huge problem on the  
22 24th, we can reconsider the second date.

23 (End of status hearing)

24

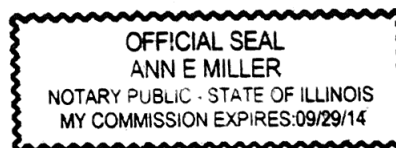
1 STATE OF ILLINOIS }  
2 } SS:  
3 COUNTY OF C O O K }

4 I, Verla A. Todd, a Certified Shorthand  
5 Reporter doing business in the City of Chicago, County  
6 of Cook, and State of Illinois, do hereby certify that I  
7 reported in shorthand the proceedings of said hearing as  
8 appears from my stenographic notes so taken and  
9 transcribed under my direction and control.

10 IN WITNESS WHEREOF, I have hereunto  
11 set my hand at Chicago, Illinois, this 23<sup>rd</sup> day of  
12 December, A.D. 2011.

13  
14 Verla A Todd  
15 Certified Shorthand Reporter  
16 Illinois CSR License No. 084-003498

17  
18 SUBSCRIBED AND SWORN TO  
19 before me this 23<sup>rd</sup> day  
20 of December, A.D. 2011





1           HEARING OFFICER JOHNSON: We're going on  
2 the record in the case of Police Officer Bruce  
3 Askew, 11-2776, and maybe counsel can identify  
4 themselves.

5           MS. JACKSON: Wynter Jackson on behalf of  
6 the Superintendent.

7           MR. FAHY: Will Fahy on behalf of the  
8 Respondent.

9           HEARING OFFICER JOHNSON: So we've had a  
10 prehearing conference pursuant to the Rule on this  
11 case, and as a result of the conference, we have the  
12 following agreements.

13           That in this case the City is going to be  
14 calling five civilian occurrence witnesses, Greg  
15 Larkins, Norman Mitchem, Alice Larkins, Etta Perry  
16 and Norman Perry, all of whom witnessed this alleged  
17 battery in 2006.

18           The Officer will testify himself. He's  
19 also going to call Officer Sutton and Officer Shinn,  
20 who were both on the scene.

21           And then he has seven character witnesses,  
22 Avila, Long, Szeffc, S-z-e-f-c; Forgue, F-o-r-g-u-e;  
23 Snelling, Tankson and Moore, who may all testify or  
24 maybe a subset will testify. That will round out



1 our witness list.

2 We did agree that the City's five civilian  
3 witnesses plus Officer Sutton will testify on the  
4 23rd. Everybody else will be the 24th. The dates  
5 are still good, so we are going to hear the case on  
6 the 23rd and 24th at 10:00.

7 Stipulations. The City is going to offer  
8 the medical records of Mr. Larkins, and there's  
9 going to be a stipulation to the authenticity and  
10 admissibility of those records, though the date of  
11 the treatment will be give rise to some argument  
12 about the meaningfulness of the records.

13 There's also going to be a fire department  
14 ambulance record, where there's a stipulation that  
15 the City will put in as to its authenticity and  
16 admissibility.

17 There are evidence technician photos of  
18 Mr. Larkins at the hospital, which will be admitted  
19 by stipulation without a foundation, but the date --  
20 actually, they're not at the hospital, are they?

21 MS. JACKSON: No.

22 HEARING OFFICER JOHNSON: It's later --  
23 sorry. But the date of those photos will be part of  
24 the stipulation.

1           The City will also offer photographs taken  
2 by Alice Larkins, but there's no stipulation  
3 regarding those.

4           Then we're going to have some general  
5 orders. The City is going to put in the Tactical  
6 Response Report Order, which will be admitted by  
7 stipulation.

8           The Respondent is going to put in the Use  
9 of Force General Order, which will be admitted by  
10 stipulation.

11          And then the Respondent is going to also  
12 by the first hearing date have together certified  
13 copies of certain convictions of Mr. Larkins, which  
14 will be used in cross-examination of Larkins. And  
15 we are going to determine what those are right prior  
16 to the hearing and figure out which ones can be  
17 used.

18          We have looked at Officer Askew's  
19 Complimentary and Disciplinary record. I don't  
20 think there's any issue on the complimentary  
21 history.

22          We do have some questions about the  
23 disciplinary history, the most important question  
24 being whether post-occurrence discipline can be

1 considered by the Board. There might be an issue  
2 about whether all the discipline is within the  
3 five-year rule, although maybe not.

4 So what we're going to do on that is  
5 Mr. Fahy is going to look at what the contract says  
6 and whatever other authority there is, and we're  
7 going to take that up before the hearing starts, but  
8 in a separate transcript, as sort of a continuation  
9 of this prehearing conference and determine what the  
10 Board properly should look at by way of discipline.

11 Then there's a Motion to Dismiss, which  
12 has already been filed, which pertains to the  
13 timeliness of the charges, so the City is going to  
14 take until March 2nd to file a response.

15 That response is going to include some  
16 material that the City just got today in terms of  
17 continuation requests. You're going to tender that  
18 to Mr. Fahy, today, right?

19 MS. JACKSON: Yes, by way of supplemental  
20 discovery, but not today, though.

21 HEARING OFFICER JOHNSON: Not today?

22 MS. JACKSON: I just got it. I haven't  
23 looked at it.

24 HEARING OFFICER JOHNSON: But you'll do

1 it --

2 MS. JACKSON: Soon.

3 HEARING OFFICER JOHNSON: In the next  
4 couple of days?

5 MS. JACKSON: Yes.

6 HEARING OFFICER JOHNSON: So then the City  
7 will have to March 2nd to file a Response to the  
8 Motion to Dismiss, and Mr. Fahy is going to have  
9 until March 8th, hopefully in the afternoon, to file  
10 his reply. And then I'm going to take the Motion to  
11 Dismiss with the merits of the case. Anything else?

12 MS. JACKSON: Just that all of my  
13 witnesses were subpoenaed. I talked to everybody  
14 except for one, in case there's some scheduling  
15 problem that I don't foresee.

16 HEARING OFFICER JOHNSON: One of the  
17 civilian people?

18 MS. JACKSON: Yes.

19 HEARING OFFICER JOHNSON: But we'll do our  
20 best to get them here?

21 MS. JACKSON: Yes.

22 HEARING OFFICER JOHNSON: So we'll take up  
23 just that one issue in a continued prehearing  
24 conference right before the hearing. Thanks.



1 MS. JACKSON: Thank you.

2 MR. FAHY: Thank you.

3 HEARING OFFICER JOHNSON: You're welcome.

4 (WHICH WERE ALL THE PROCEEDINGS  
5 HAD IN THE ABOVE-ENTITLED CAUSE  
6 ON THIS DATE AND TIME.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF C O O K )

4 DANIEL M. PRISCU hereby certifies that he  
5 reported in shorthand the proceedings in the  
6 above-entitled matter and that the foregoing is a  
7 true and correct transcript of said proceedings.  
8  
9

10   
11 Certified Shorthand Reporter  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## BEFORE THE CITY OF CHICAGO POLICE BOARD

IN THE MATTER OF:

CHARGES AGAINST

P.O. BRUCE ASKEW,

Respondent.

)  
)  
)  
)  
)  
)  
)

ORIGINAL

No. 11 PB 2776

30 North LaSalle Street  
Suite 1220  
Chicago, Illinois 60602

February 23, 2012  
10:30 o'clock a.m.

PRESENT: Mr. Thomas E. Johnson, Hearing Officer  
Mr. Max Caproni, Executive Director  
Ms. Wynter C.N. Jackson,  
City of Chicago Corporation Counsel,  
on behalf of the Superintendent;  
Mr. William N. Fahy,  
on behalf of the Respondent.

REPORTED BY: DANIEL M. PRISCU, CSR.  
License No. 084-003982

1           HEARING OFFICER JOHNSON: We're going to  
2 go on the record now in the case of Police Officer  
3 Bruce Askew, 11-2776, and this is a continuation of  
4 the prehearing conference. We left two issues  
5 somewhat up in the air.

6           The first is with respect to the  
7 disciplinary record of this Officer what the Police  
8 Board will be permitted to look at, if, and only if,  
9 they would find Officer Askew guilty.

10          Officer Askew is present. The way it  
11 works is the Board looks at the videotape, the  
12 transcript. They vote on guilt or innocence on this  
13 particular allegation. And they don't normally look  
14 at your Complimentary and Disciplinary History until  
15 after there's a vote. So if you're not guilty, they  
16 never look at it.

17          So Mr. Fahy had issues on the disciplinary  
18 record.

19          MR. FAHY: Yes. It's the Respondent's  
20 position that the Board should not be allowed to  
21 consider the Disciplinary History, the updated  
22 Disciplinary History that has been presented in this  
23 case through discovery.

24          Essentially, what we have here is an



1 investigation that took over five years before any  
2 charges were filed against the Respondent.

3 Certainly, this was a case that could have  
4 been -- an investigation, a thorough investigation  
5 could have been conducted and pleaded within 30 days  
6 of the incident, which is required under General  
7 Order CPD 93-03.

8 The witnesses to this incident that the  
9 Superintendent has are five individuals. Those five  
10 individuals lived at the address of this occurrence  
11 at 64th and Marshfield. They lived there then.  
12 They still live there now.

13 The Respondent has three witnesses;  
14 basically, himself, and two fellow officers that  
15 were on the scene, one a police officer, one a  
16 sergeant, so essentially eight witnesses to this  
17 incident.

18 Because they waited over five years to  
19 file the charges on this very simple investigation,  
20 my client is now in a position where if he is found  
21 guilt of any of the charges, the Board is going to  
22 have an opportunity to look at his prior  
23 disciplinary record to determine what is the  
24 appropriate sanction.

1           His prior disciplinary record that would  
2 be before the Board now consists entirely of  
3 incidents that occurred subsequent or after this  
4 particular incident; in other words, had this thing  
5 been brought in a timely manner, and even if there  
6 was a finding of guilty on any of these charges, the  
7 Board would not have any of these disciplinary  
8 infractions in front of them.

9           I did not include that in the Motion to  
10 Dismiss for obvious reasons, because I certainly  
11 don't want the Board or anyone else to be, you know,  
12 shaded or colored one way or the other without  
13 hearing the case first.

14           But this delay is a cause of a real  
15 detriment to my client, because now the Board,  
16 should he be found guilty, and if he is found guilty  
17 of these charges, is going to hear about his prior  
18 disciplinary history, which consists of three  
19 sustained findings, one of them a Police Board case.

20           I realize that the Motion to Dismiss is  
21 going to be presented to the Board, and I realize  
22 that it's not going to be ruled upon prior to this  
23 hearing.

24           But in the alternative, what I'm asking is

1 if the Board, should there be a finding of guilty on  
2 any of these charges, not consider any disciplinary  
3 history.

4 HEARING OFFICER JOHNSON: Okay. And I  
5 understand that argument.

6 Separate from that argument, is there an  
7 issue with respect to the text of the FOP contract  
8 in terms of any of these items of discipline?

9 MR. FAHY: No.

10 HEARING OFFICER JOHNSON: So they'd all be  
11 timely, except for the delay in the initiation of  
12 the charges?

13 MR. FAHY: Yes.

14 HEARING OFFICER JOHNSON: Does the City  
15 want to say anything? Apparently, we don't have an  
16 FOP issue.

17 MS. JACKSON: That was going to be my  
18 precise point, Mr. Hearing Officer.

19 The provision that was agreed upon by the  
20 Union for the Respondent and the City of Chicago  
21 will provide this Board with the authority to look  
22 at anything within five days after the matter comes  
23 before this Board after the date that it's known by  
24 the Superintendent.

1           So our contention is that when this  
2 investigation was completed, it became known by the  
3 Superintendent and therefore anything after that  
4 time within five days of the contract would allow  
5 this Board to see it. So all of the items on the  
6 Disciplinary History as it exists today, we would  
7 urge the Board to review that if it finds the  
8 Respondent guilty of any of the allegations before  
9 it in this matter.

10           HEARING OFFICER JOHNSON: And just so I  
11 remember, the FOP contract says what?

12           MR. FAHY: It's essentially a five-year  
13 period.

14           HEARING OFFICER JOHNSON: Starting?

15           MR. FAHY: At the time of the hearing.

16           MS. JACKSON: Well, I have the contract  
17 with me. I could cite the language for you, if you  
18 give me one second.

19           HEARING OFFICER JOHNSON: So it's five  
20 years back --

21           MR. FAHY: Police Board cases are exempt.

22           HEARING OFFICER JOHNSON: -- from the date  
23 of the hearing, except for Police Board cases?

24           MS. JACKSON: Yes.



1 HEARING OFFICER JOHNSON: And the City's  
2 position is that the delay in the bringing of the  
3 charges doesn't make any difference? The FOP  
4 contract allows us to look at the discipline within  
5 the preceding five years?

6 MS. JACKSON: Right. And that's  
7 Article 8, titled Employee Security, Section 8.4,  
8 Use and Destruction of File Material.

9 And it states in pertinent part, and as  
10 counsel stated, it exempts the Police Board cases,  
11 so the prior cases would be able to be reviewed  
12 anyway. All disciplinary records will be destroyed  
13 five years after the date of the incident or the  
14 date upon which the violation is discovered,  
15 whichever is longer.

16 So the Superintendent's contention is that  
17 the violation was discovered when this matter became  
18 sustained by IPRA.

19 HEARING OFFICER JOHNSON: Okay. So it's  
20 going to sort of stand or fall in part with this  
21 Motion to Dismiss.

22 And on the Motion to Dismiss what did we  
23 say about your response?

24 MR. FAHY: There was a briefing schedule.

1 MS. JACKSON: Yes.

2 MR. FAHY: I believe the Superintendent is  
3 to respond by March 2nd, and then I am to reply on  
4 March 8th.

5 MS. JACKSON: That's correct.

6 HEARING OFFICER JOHNSON: All right. And  
7 then one other thing on this transcript.

8 What about convictions that you're going  
9 to use?

10 MR. FAHY: With regard to convictions, I  
11 know we're all well aware of the Montgomery Rule,  
12 which kind of lays out a ten-year period from the  
13 time of the testimony of whoever is testifying.

14 Going back now, once again, because of the  
15 delay in the proceedings, the Board will never have  
16 in front of them evidence that Mr. Larkins is a  
17 convicted felon, two separate convictions, and he  
18 did serve penitentiary time. I won't be able to  
19 introduce them.

20 However, within the ten-year time period,  
21 he has been convicted of two separate misdemeanors,  
22 crimes of dishonesty, both of them retail theft, and  
23 I do have the certified copies of convictions.

24 HEARING OFFICER JOHNSON: And so the

1 felonies are more than ten years prior to today --

2 MR. FAHY: Yes.

3 HEARING OFFICER JOHNSON: -- but less than  
4 ten years prior to the date of the incident?

5 MR. FAHY: That's right.

6 Well, his release date was less than ten  
7 years, and that tolls the Montgomery Rule, so  
8 regardless, I can't use them. They're from the  
9 '90s.

10 HEARING OFFICER JOHNSON: I see.

11 MR. FAHY: That's with regard to  
12 Mr. Larkins.

13 HEARING OFFICER JOHNSON: So that's an  
14 interesting argument for you on your Motion to  
15 Dismiss.

16 MR. FAHY: So those were the two that I  
17 was intending to use.

18 I have the certified copies of convictions  
19 with regard to Mr. Mitchem.

20 MS. JACKSON: I'm sorry. I don't mean to  
21 interrupt.

22 The two that you intend to use are which  
23 ones?

24 MR. FAHY: Retail theft, which he was

1 convicted on June 17, 2003, in Bridgeview, under  
2 Case Number 03500419801.

3 And the other one is a retail theft  
4 conviction from October 3, 2007, under Case Number  
5 07128086001.

6 MS. JACKSON: Thank you.

7 MR. FAHY: With regard to Mr. Norman  
8 Mitchem, who is also known as Norman Perry, Junior,  
9 I'm not trying to use any of their -- they both have  
10 several arrests, and some of the convictions are  
11 outside of the ten-year rule. I'm not trying to use  
12 any of them.

13 With regard to Mr. Mitchem, he does have  
14 within the ten-year rule one felony conviction under  
15 Case Number 08 CR 1757901, and he was sentenced  
16 to -- he was found guilty and sentenced to a period  
17 of probation, two years' probation, on April 16,  
18 2009, before Judge Davy in the Bridgeview  
19 courthouse.

20 That matter is still pending because a  
21 subsequent violation of probation was filed, and  
22 it's still pending before Judge Davy at the next  
23 court date of March 19th of this year.

24 The basis of that violation is he had been

1 arrested and picked up a Class X felony, a narcotics  
2 charge under Case Number 10 CR 1980101. That is the  
3 basis for the violation of his probation.

4 And there is also a new case that is also  
5 pending before Judge Davy on March 19, 2012.

6 HEARING OFFICER JOHNSON: You're not going  
7 to confront him with the arrest on the new drug  
8 charge?

9 MR. FAHY: No. I don't think I can.

10 HEARING OFFICER JOHNSON: I don't have any  
11 problem with any of those convictions. Does the  
12 City?

13 MS. JACKSON: Yes. We would like to make  
14 our objection for the record, and we would urge the  
15 Hearing Officer and Members of the Board we are all  
16 familiar with People versus Montgomery, but even in  
17 that case, the Court did lay out a three prong test,  
18 and it cautioned lower courts from mechanically  
19 applying the Montgomery Rule and virtually allow any  
20 type of impeachment just because the conviction was  
21 a felony.

22 There are other considerations to take  
23 into account here, and we would just urge the Board  
24 not to routinely and automatically allow that



1 admission.

2 HEARING OFFICER JOHNSON: Right. I  
3 remember the factors, but I think these are two  
4 principal witnesses. These are the two combatants,  
5 or whatever, so I would say their credibility is  
6 very --

7 MS. JACKSON: When you say "combatants,"  
8 they fought each other.

9 HEARING OFFICER JOHNSON: Right.

10 MS. JACKSON: And so we would say that the  
11 probative value is not outweighed by the prejudice  
12 here, because it was not any type of back and forth  
13 situation with law enforcement. It was a fight  
14 between family members. And so I would just stand  
15 on that as our objection.

16 HEARING OFFICER JOHNSON: Right. I just  
17 think their credibility is important vis-a-vis what  
18 the officer did.

19 And given the nature of the underlying  
20 convictions, and given the role of those two  
21 witnesses in the case, I don't have a problem with  
22 them being confronted with these convictions.

23 MS. JACKSON: Mr. Hearing Officer?

24 HEARING OFFICER JOHNSON: Yes?

1 MS. JACKSON: Is that notwithstanding  
2 those that occurred after the date of the incident,  
3 the date in question?

4 HEARING OFFICER JOHNSON: You mean the  
5 date of the incident involving the Officer?

6 MS. JACKSON: Right. I believe at the  
7 status there was made mention of convictions that  
8 occur after the October 7, 2006, date, and I don't  
9 recall hearing any one of those.

10 There was a 2007 for Mr. Larkins, so our  
11 contention would be that that would have no issue or  
12 probative value to the Board, because it could be  
13 said to not have any -- it couldn't show any animus  
14 to our police officers.

15 It occurred after the date in question,  
16 and it couldn't really weight on his credibility.  
17 It occurred after the date in question.

18 HEARING OFFICER JOHNSON: But it's not  
19 being offered because of his animus toward police  
20 officers, as I understand it.

21 That would be a different where there is  
22 this authority where you can try to get arrests in  
23 on that basis, but my understanding is it's just  
24 being tendered or used as to -- as a way to assess

1 his credibility as he testifies today.

2 MR. FAHY: That's correct. And that's  
3 where the ten-year period kicks in.

4 If the City would prefer that we go ten  
5 years back from October of 2006, I would be willing  
6 to agree to that, and go from '96 to 2006 with  
7 regard to both criminal histories.

8 I'm familiar with the Montgomery Rule.  
9 It's from the time that they're testifying.


10 HEARING OFFICER JOHNSON: Right. It goes  
11 from the date of the testimony, so I don't have a  
12 problem with post-incident, pre-testimony  
13 convictions.

14 So with those rulings, then, let's end  
15 that transcript, and let's go off the record for a  
16 second.

17 (WHICH WERE ALL THE PROCEEDINGS  
18 HELD IN THE ABOVE-ENTITLED CAUSE  
19 ON THIS DATE AND TIME.)  
20  
21  
22  
23  
24

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF C O O K )

4 DANIEL M. PRISCU hereby certifies that he  
5 reported in shorthand the proceedings in the  
6 above-entitled matter and that the foregoing is a  
7 true and correct transcript of said proceedings.

8  
9  
10   
11 Certified Shorthand Reporter  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

BEFORE THE POLICE BOARD  
OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES )  
FILED AGAINST )  
P.O. BRUCE ASKEW. )

) Case No. 11-2776

) ORIGINAL

REPORT OF PROCEEDINGS had at the  
status in the above-entitled matter before Mr.  
Thomas Johnson, Hearing Officer, at 30 North  
LaSalle Street, Suite 1240, Chicago, Illinois,  
on April 2nd, 2011, at the hour of 3:00 p.m.

- - - - -

APPEARANCES:

CITY OF CHICAGO  
DEPARTMENT OF LAW  
LABOR DIVISION  
BY: MS. WYNTER JACKSON  
30 North LaSalle Street  
Suite 1020  
Chicago, Illinois 60602,

On behalf of the Superintendent;

MR. WILLIAM N. FAHY,

On behalf of the Respondent;

POLICE BOARD OF THE CITY OF CHICAGO  
MR. MAX CAPRONI



1 HEARING OFFICER JOHNSON: Let's go on the  
2 record in the case of Police Officer Bruce  
3 Askew, 11-2776. If counsel could identify  
4 themselves for the record.

5 MS. JACKSON: Wynter Jackson for the  
6 Superintendent.

7 MR. FAHY: And good afternoon. My name  
8 is Will Fahy. I represent Police Officer Bruce  
9 Askew.

10 HEARING OFFICER JOHNSON: So I did go over  
11 the briefs that were filed, and I understand  
12 that the respondent embraces wholeheartedly  
13 section 10-1-18.1.

14 With respect to the City's brief, as  
15 I read this and I read the cases, it looked to  
16 me like the City was taking the position that  
17 the City Council ordinance approving the  
18 collective bargaining agreement acts as an  
19 expression of the City's home rule power which  
20 has the effect of undoing the statute in favor  
21 of the collective bargaining agreement  
22 provision that you cited which says that the  
23 Superintendent can go more than five years back  
24 in pursuing a case.

1 MS. JACKSON: Hearing Officer Johnson, I  
2 think that's kind of our point but not  
3 precisely.

4 I think I went through the point  
5 of trying to make the point that the City of  
6 Chicago is a home rule unit; however, Resman,  
7 even though I believe in that case the court  
8 declined to take up the issue of whether the  
9 instant section manifested the City's opting  
10 out of being a home rule unit, that case did  
11 hold that the City did intend, although it has  
12 its own personnel scheme, it did intend for the  
13 section at issue here to apply to the City of  
14 Chicago.

15 So I went -- I was trying to make  
16 the point that although the City is a home rule  
17 unit, when it comes to the government of the  
18 Police Board, we did not opt out of the state  
19 statute.

20 But the point is that when we  
21 became a home rule unit as it pertains to  
22 personnel provisions, we did -- the section at  
23 issue here did not contain the five-year  
24 statute of limitations.

1                   So in 1976 and in 1981 when the  
2                   City became a home rule unit as it pertains to  
3                   personnel provisions, it didn't contain the  
4                   five-year provision.

5                   And that's why the CBA is  
6                   instructive on that point, because when the  
7                   five-year statute of limitations was added to  
8                   the section at issue here in 1992, shortly  
9                   thereafter FOP and the City amended the  
10                  collective bargaining agreement.

11                  So it's not entirely that the  
12                  collective bargaining agreement manifests the  
13                  City being a home rule unit, it's that the CBA  
14                  bargained for provisions outside the newly  
15                  enacted five-year statute of limitations.

16                  HEARING OFFICER JOHNSON: Okay. But let's  
17                  just go back for a second.

18                  There is this state personnel  
19                  code, I guess is what I would call it.

20                  MS. JACKSON: Yes.

21                  HEARING OFFICER JOHNSON: And the  
22                  five-year statute of limitation is added to the  
23                  state personnel code, right?

24                  MS. JACKSON: Well, when I talked about in

1 our brief the state personnel code, we're  
2 talking about beyond the section at issue here  
3 that only governs the Police Board, all civil  
4 service titles.

5 We do not -- the City of Chicago,  
6 doesn't adhere to the state personnel code in  
7 general, only to two sections, one of it being  
8 the personnel board section. Section 10- -- I  
9 mean Police Board, I'm sorry. Police Board  
10 section.

11 HEARING OFFICER JOHNSON: Let's just -- so  
12 there is -- just to go all the back to the  
13 basics, there is a state personnel code, but in  
14 1976 and again in 1981, the City of Chicago  
15 acting under its home rule power said we are  
16 not going to be bound by this for the most  
17 part. We are going to have our own personnel  
18 code.

19 MS. JACKSON: Yes.

20 HEARING OFFICER JOHNSON: And then before  
21 this five-year statute of limitations is  
22 adopted, the Supreme Court in 1988 in this  
23 Dineen case takes up a situation where there's  
24 some police officers who want to run for office

1 and the City has a rule that says you have to  
2 take a leave of absence if you're going to do  
3 that. It's actually in the collective  
4 bargaining agreement with the City, which  
5 becomes law when the City Council approves it.

6 And the Supreme Court -- and the  
7 officers say, hey, the state personnel code  
8 does not require us to take a leave of absence.  
9 And the state personnel code trumps this  
10 collective bargaining agreement.

11 In the end, the Supreme Court  
12 says, you know what, the City of Chicago is not  
13 subject to that personnel code and the  
14 provisions you're talking about, so they  
15 can't -- let me see if I got that right.

16 The law that preempted the local  
17 rule does not apply to Chicago.

18 And because it didn't apply to  
19 Chicago, the personnel code provisions that  
20 they were relying upon, it couldn't trump the  
21 collective bargaining agreement, and so these  
22 officers had to take leaves of absence.

23 But then there was a second  
24 argument that they made in the Supreme Court,



1     which was they had a different argument as to  
2     why the City was subject to the personnel code,  
3     which again would have gotten them the statute  
4     that they wanted, and the Supreme Court said  
5     you waive that argument.

6                     We're not going to get into it  
7     one way or the other, right?

8             MS. JACKSON:   Yes.

9             HEARING OFFICER JOHNSON:   So from that  
10     Dineen case, your position is that Chicago is  
11     not subject to the personnel code in the same  
12     way, and so the collective bargaining provision  
13     at issue here which you cited in your brief  
14     applies?

15             MS. JACKSON:   Yes, that's precisely it.

16             HEARING OFFICER JOHNSON:   Okay.

17             MS. JACKSON:   To that, Mr. Hearing  
18     Officer, I did not attach -- what I attached as  
19     Exhibit C is a most recent version of the FOP,  
20     and I anticipated preempting one of your  
21     questions, which would be to show the Board  
22     what I cited to as CBA 95 through 99.

23                     I have a copy of Article 6 from  
24     the '99 to '95 CBA and its predecessor showing

1 it didn't exist in the CBA before '95, and that  
2 it does exist for the first time in '95 through  
3 '99.

4 HEARING OFFICER JOHNSON: So why don't we  
5 mark those Exhibits D and E. How about that?

6 MS. JACKSON: As City Exhibit D I'll mark  
7 the '95 contract. And I'll give a copy to  
8 respondent's counsel.

9 HEARING OFFICER JOHNSON: And then the  
10 point of -- I'll let you do that first.

11 And then you have this Resman  
12 case which is a fire lieutenant who lives  
13 outside the City and the City fires him and he  
14 says the state personnel code entitled me to a  
15 warning, written warning, pre-termination, and  
16 the court says, no, Chicago's a home rule  
17 district, the personnel code doesn't apply to  
18 you, at least that provision of it.

19 MS. JACKSON: Uh-huh.

20 MR. JOHNSON: So here's the -- so the one  
21 problem here, or just trying to think it  
22 through, is when the legislature passes the  
23 five-year statute of limitation, which is  
24 -- when does that happen, '92. They're

1 explicit that they're applying this only to  
2 Chicago. They say municipality of more than  
3 500,000. And then they say at the end no  
4 municipality including a home rule unit can  
5 change this, citing the provision of the  
6 constitution that limits home rule units I  
7 think on this particular provision.

8                   You know, there's two sections of  
9 the constitution on home rule, I think this  
10 Dineen case talked about it, where there's one  
11 provision you can invoke which says no one can  
12 ever change -- let's just be clear about it.

13                   Okay. So, yes, it says on page  
14 258 of the -- 257 and 258 of the published  
15 decision in Dineen, if the legislature invokes  
16 6-G of Article 7 of the Illinois Constitution,  
17 that preempts all --

18           MS. JACKSON: I'm sorry. Can you state  
19 where it is again?

20           HEARING OFFICER JOHNSON: Actually, if you  
21 have the printed version, it's on page five.

22                   But they have this discussion  
23 about the difference between Section 6-G and  
24 6-H of the constitution. And 6-G is the

1 broader waiver. So on this five-year statute  
2 of limitations they use 6-H.

3 MS. JACKSON: I don't see that language.  
4 I have a copy of the statute -- of the section.

5 HEARING OFFICER JOHNSON: It's actually  
6 10-1-18.2.

7 MS. JACKSON: I don't have that. I just  
8 have .1.

9 HEARING OFFICER JOHNSON: Let me tender  
10 that to you. It's the last page of the  
11 statute.

12 (Tendering document.)

13 MS. JACKSON: Thank you.

14 HEARING OFFICER JOHNSON: So 6-H of the  
15 constitution allows the legislature to provide  
16 specifically by law for the exclusive exercise  
17 by the state of any power or function of a home  
18 rule unit.

19 And so I'm thinking that if I  
20 understand the City's argument correctly, the  
21 problem is this 10-1-18.2.

22 MS. JACKSON: The distinction, Mr. Hearing  
23 Officer, is that the City did not opt out of  
24 the state's personnel scheme by virtue of being

1 a home rule unit. We opted out of it by  
2 collective bargaining for it.

3 As I'll read it, I was just  
4 tendered, and I hadn't read it earlier in  
5 preparation of our brief, section 10-1-18.2.  
6 And it's saying to me that a municipality, the  
7 City of Chicago, even if you are a home rule  
8 unit, you can't make your own rule that sets  
9 other statutes of limitations other than those  
10 that are established herein.

11 Well, we didn't -- our argument  
12 is that it's not by virtue of us being a home  
13 rule unit that we can set our own statute of  
14 limitation, it's by virtue of the parties  
15 collectively bargaining that we were able to do  
16 that.

17 So FOP by protecting and  
18 representing its members agree to allow the  
19 Superintendent to act on complaints outside of  
20 five years. It was not the City of Chicago as  
21 a home rule unit. And then the City ordinance  
22 made it law by ratifying that CBA.

23 HEARING OFFICER JOHNSON: But I mean I  
24 understand your point, you're taking the



1 position that the union sort of bargained away  
2 this protection that otherwise would apply to  
3 its members. I guess that --

4 MS. JACKSON: To wit, though, this is  
5 saying home rule unit, City of Chicago, you  
6 can't get out of the five-year limitation by  
7 virtue of declaring your home rule unit.

8 I'm saying that's not what we're  
9 doing here, that's not our position. Our  
10 position is -- and that's why --

11 HEARING OFFICER JOHNSON: How else do you  
12 escape a statute that's aimed specifically at  
13 the City of Chicago?

14 MS. JACKSON: We're not a home rule unit  
15 for purposes of section 10-1-18.2. I concede  
16 that.

17 Each time the City Council  
18 changed its personnel scheme, 1976, 1981, we  
19 maintained this section as a part of governing  
20 the Police Board.

21 HEARING OFFICER JOHNSON: When the City  
22 adopted its own personnel code in '76 and '81,  
23 they were --

24 MS. JACKSON: Acting as a home rule unit.

1 But we didn't opt out of the section that we're  
2 talking about here, 10 -- the section at issue  
3 here.

4 HEARING OFFICER JOHNSON: The section at  
5 issue here wasn't passed until after the last  
6 time the City adopted a personnel code.

7 MS. JACKSON: So when the five-year  
8 statute of limitation in '92 was enacted, it  
9 wasn't by virtue of us being a home rule unit  
10 that we said that's not going to apply, because  
11 if that were the case, you could just draft an  
12 ordinance and City Council could have passed  
13 that. It was by virtue of the collective  
14 bargaining agreement where the parties come to  
15 a table and negotiate --

16 HEARING OFFICER JOHNSON: So you agree  
17 that as a home rule matter, Chicago can't get  
18 out of the five-year statute, it can't just go  
19 pass an ordinance. But you're saying that  
20 by -- it can escape this state statute if the  
21 union at the bargaining table agrees? That's  
22 the argument?

23 MS. JACKSON: That's the argument.

24 HEARING OFFICER JOHNSON: In these cases,

1 of course, we're not talking about anything  
2 like that. These were cases about did the  
3 personnel code govern and -- so actually I mean  
4 we did have -- in the Dineen case it was a  
5 collective bargaining act provision, but --

6 MS. JACKSON: They didn't raise the  
7 argument soon enough, so the court didn't  
8 address it squarely.

9 But I mean to wit, Mr. Hearing  
10 Officer and members of the Board, the Board has  
11 conceded, I would assert, the authority of the  
12 CBA because the statute at issue that gives the  
13 Board its authority is silent on many measures  
14 that the Board looks to the CBA to govern for.  
15 For example, the section that we're speaking  
16 about does not talk about disciplinary and  
17 complimentary records, but the Board sets aside  
18 those records and doesn't look at them until  
19 penalty because of the contract.

20 HEARING OFFICER JOHNSON: Right. But the  
21 difference there is that there's no state  
22 statute that says, you know, we can look ten  
23 years back, so now instead we're going to honor  
24 the CBA which says you can only go back five

1 years. There's not the same collision between  
2 the CBA and a statute passed by the legislature  
3 specifically aimed at Chicago that says you,  
4 Chicago, as a home rule unit can't change this.

5 MS. JACKSON: Right. I'm not suggesting  
6 that. All I'm saying, the Board has looked to,  
7 the Board has adhered to, has recognized the  
8 collective bargaining agreement provisions.  
9 And there's nothing here that stopped the Board  
10 from doing that.

11 This section is saying that as a  
12 home -- just because you are a home rule unit,  
13 by virtue of you being that, you can't opt out  
14 of this section. And we didn't. Because it's  
15 clear.

16 And I haven't stated any of that  
17 in my brief. We are governed by the section at  
18 issue.

19 But it's our right as parties to  
20 come to an agreement and that's what happened  
21 here.

22 HEARING OFFICER JOHNSON: It's  
23 interesting, because in the Dineen case, which  
24 was a collective bargaining agreement provision

1 leave policy, the whole argument was, was the  
2 City bound by the state statutory provisions,  
3 in the end the court says no, they're not, so  
4 the bargaining provision applies.

5 Then they raise the second  
6 argument, which was really an argument saying,  
7 hey, we have a different way by which we think  
8 we are bound by the state statute, and the  
9 Supreme Court says, no, you waived it.

10 But the plaintiffs understood  
11 that the end zone for them was to get the state  
12 statute to be applying.

13 And the implicit suggestion by  
14 the court was if the City was governed by the  
15 state statute, they couldn't get out from under  
16 it by way of the collective bargaining  
17 agreement.

18 In other words, if they had -- I  
19 think one of the Appellate Court or somebody  
20 ended up ruling that. Maybe it was the Circuit  
21 Court, ended up ruling that way.

22 MS. JACKSON: But they were reversed.

23 HEARING OFFICER JOHNSON: Right. I'm  
24 saying but the implicit suggestion to me of



1 this Dineen case is if the state -- if the City  
2 is governed by the state statute, we don't --  
3 in this case the preemptive state statute that  
4 said, no, you can run for office and somehow  
5 work as a police officer. If the City's bound  
6 by the state statute, we don't care what the  
7 collective bargaining agreement says. That's  
8 the way I sort of read Dineen.

9 So then applying that here where  
10 the City is obviously bound by the statute,  
11 then I'm not sure that you can bargain your way  
12 out of the statute.

13 MS. JACKSON: I don't agree with that  
14 reading of this case.

15 Dineen, I don't know if there's  
16 something specific that you can point me to.

17 HEARING OFFICER JOHNSON: So it says -- it  
18 says at page 256 of the report of decision, it  
19 says a local ordinance would be inconsistent  
20 with the act --

21 MS. JACKSON: Is that page four?

22 HEARING OFFICER JOHNSON: Yes, four.

23 "Local ordinance would be inconsistent with the  
24 act only if the home rule unit adopting the

1 ordinance" -- they're talking here about -- I  
2 think they're thinking the ordinance is the  
3 ordinance approving the collective bargaining  
4 agreement.

5 So, "The local ordinance would be  
6 inconsistent with the act only if the home rule  
7 adopting the ordinance were covered under one  
8 of the statutes amended by the act," that is  
9 if -- only if the home rule unit were division  
10 or division 2.1 municipality, "as the Appellate  
11 Court correctly reasoned, an ordinance adopted  
12 by a home rule unit other than division one or  
13 division 2.1 municipality would not be  
14 prohibited by the act, and therefore would not  
15 be inconsistent with it."

16 Then they go on to say,  
17 "Chicago's not a division one or division 2.1  
18 municipality. Therefore they can go ahead and  
19 have this collective bargaining agreement.

20 And the court ends up enforcing  
21 the collective bargaining agreement.

22 I think the difference -- and I  
23 have to say it's a more complicated question  
24 than I think we thought it was.

1 But I have to say that here it's  
2 different than Dineen, because the City is  
3 clearly bound by this.

4 I think only the City is bound by  
5 this statute. And then they put the icing on  
6 the cake with the provision saying even though  
7 we know your home rule, you can't change this.

8 MS. JACKSON: I disagree with your reading  
9 of this.

10 If you begin on page -- printed  
11 page three, when it begins the whole  
12 discussion, I don't believe the court here is  
13 making any distinction between a CBA. It's  
14 make a distinction which I think is in line  
15 with my earlier argument, that if a home rule  
16 unit creates an ordinance that's inconsistent  
17 with the act, that inconsistent ordinance would  
18 be at issue. That's still the hallmark of my  
19 position.

20 We didn't -- we're not asserting  
21 to this Board that we can just because we're a  
22 home rule unit create an act that's  
23 inconsistent with the section that you've just  
24 pointed out to me. I think .12, they're not

1 talking about a collective bargaining provision  
2 here, they're talking about an inconsistent  
3 ordinance, which would be the City Council in  
4 and of itself saying we want to change the  
5 statute of limitations inconsistent to what the  
6 state legislature said. That's not at issue  
7 here.

8 We recognize that we're home rule  
9 and we're subject to the section at issue here,  
10 but for the parties coming together on their  
11 own, not the City Council, but FOP and the City  
12 of Chicago as an entity, not the City -- not  
13 the City Council promulgating its own ordinance  
14 that's inconsistent.

15 HEARING OFFICER JOHNSON: Except for in  
16 Dineen, it was a collective bargaining  
17 agreement provision that required this leave  
18 that the officers wanted to set aside, so that  
19 the policy that was in dispute in Dineen was  
20 rooted in the collective bargaining agreement.  
21 And then they point out on page two that the  
22 collective bargaining agreement between the  
23 Lodge and the City was then essentially made  
24 into an ordinance when the City Council adopted

1 the agreement as an ordinance, because I guess  
2 no CBA can go into effect unless the City  
3 approves it by ordinance.

4 The thing is, Dineen involved a  
5 -- just like you're arguing, involved a CBA  
6 provision.

7 So I'm just -- I think the main  
8 thing is today just sort of get out what  
9 everybody thinks about this stuff, so that the  
10 Board can take a look at it. That's why I'm  
11 trying to be leading in my questions.

12 I'm trying to understand myself  
13 exactly what your position is.

14 I think I have it, which is that  
15 there is -- you think that by -- it's  
16 interesting, because I think this statute was  
17 pushed by the FOP in the first place, this  
18 five-year statute. Coming on the heels of the  
19 Burge case. And so it would be ironic if then  
20 in bargaining they bargained away the very  
21 statute that they sought to have adopted.

22 But I understand that's your  
23 position.

24 MS. JACKSON: Well, they bargained to the



1 extent that the Superintendent of police is  
2 allowed to look into allegations that the  
3 Department becomes aware of beyond five years.

4 So our position is that it's  
5 reasonable that if the Superintendent can look  
6 into it, if you can reopen or investigate  
7 matters, what is the Superintendent doing it  
8 for? Just to know? And can't do anything  
9 about it.

10 HEARING OFFICER JOHNSON: That's a really  
11 good question. It does raise for me another  
12 point, which is when you read the provision of  
13 the collective bargaining agreement that you  
14 are relying on, the language is hard for me to  
15 understand exactly.

16 MS. JACKSON: I think -- I read it in the  
17 affirmative.

18 HEARING OFFICER JOHNSON: Let's leave out  
19 unless the Superintendent of Police authorizes  
20 in writing otherwise.

21 The general prohibition is no  
22 complaint or allegation of any misconduct  
23 concerning any incident or event which occurred  
24 five years prior to the date the complaint or

1 allegation became known to the Department shall  
2 be made the subject of a complaint register  
3 investigation. What exactly does that mean?

4 MS. JACKSON: No complaint or allegation  
5 of any misconduct concerning any incident or  
6 event. If it occurred five years before the  
7 Department became aware of it, you can't reopen  
8 it or investigate it.

9 HEARING OFFICER JOHNSON: Are they saying  
10 sort of like in the Burge case, are they saying  
11 if the allegation of police misconduct -- if  
12 the event, the abuse by a police officer takes  
13 place and more than five years have passed  
14 since that event, or since the Department  
15 became aware of that event, those are the two  
16 start dates, if more than five years have  
17 passed, you can't open an investigation, unless  
18 the police Superintendent says you can, which  
19 is a little bit of a different issue than here,  
20 because we're talking about -- we're talking  
21 about how long it takes between the event and  
22 the filing of charges. Aren't they sort of two  
23 different things? So --

24 MS. JACKSON: The way they practically

1 happen, there they're usually one and the same.  
2 And this will be a perfect case. It happened  
3 on one date. We learned about it near the same  
4 date. So for purposes of this case, they're  
5 virtually the same.

6 The Superintendent learned about  
7 it not too long after it happened. So five  
8 years after the complaint was made.

9 HEARING OFFICER JOHNSON: What it's  
10 talking about is -- it's about when you can  
11 make something the subject of a complaint  
12 register investigation.

13 So like in this case,  
14 they -- everybody found out what happened  
15 because they relatively promptly -- the victims  
16 relatively promptly went to the department and  
17 complained, but they opened a CR investigation  
18 right away, right? So we're not talking about  
19 here how quickly, you know, the speed with  
20 which they opened the CR investigation, we're  
21 talking about when they brought the charges.

22 So Mr. Fahy and other  
23 respondent's counsel are often saying, hey, the  
24 length of your investigation just went too

1 long, not when you triggered it. Whereas take  
2 the Burge case, okay, the events take place  
3 long ago, early '80s, or whenever it was, but  
4 they don't open a CR until -- I don't know the  
5 dates, so I probably shouldn't speak on the  
6 record, but more than five years after the  
7 allegations happen.

8 So it seems to me this provision  
9 might be talking about something different.

10 MS. JACKSON: Well, I spoke to the person  
11 who negotiated this contract for the City, and  
12 that was explicitly relayed to me that's when  
13 the City Council enacted the section, five-year  
14 statute of limitation, this was directly  
15 tailored to counter that. So I think if we  
16 talk about --

17 HEARING OFFICER JOHNSON: When the state  
18 passed the statute you mean?

19 MS. JACKSON: Yes. I think you're raising  
20 points that really don't speak to the mechanics  
21 and the logistics of how it will work  
22 throughout the department.

23 I mean you just don't have a  
24 complaint or an allegation of wrongdoing, it

1 always manifests itself with a CR number.

2 HEARING OFFICER JOHNSON: In this case the  
3 CR was issued -- I'm trying to remember the  
4 evidence now, but once they --

5 MS. JACKSON: Like the same day or the  
6 next day.

7 HEARING OFFICER JOHNSON: Right around the  
8 same time. So I can see somehow arguing on  
9 this collective bargaining agreement that  
10 there's no -- they were fine. It was a prompt  
11 starting of the CR investigation, the. Rub,  
12 the problem, according to Mr. Fahy's client  
13 then they sat on the thing for more than five  
14 years.

15 MS. JACKSON: I think -- I'd see the  
16 argument, but I think this is an intersection  
17 of the two. It's a difference -- what is it?  
18 A distinction without a difference the saying  
19 goes. For this case it really doesn't matter.  
20 It all happened it at the same time. The  
21 Superintendent specifically authorizing in  
22 writing, is our position is the same as the  
23 charges for purposes of the question regarding  
24 the five-year statute of limitations.



1 HEARING OFFICER JOHNSON: We've been doing  
2 all the talking. Mr. Fahy.

3 MR. FAHY: I would state I did not find  
4 any cases on point with regards to the  
5 particular statute in question.

6 It was enacted in 1992 by  
7 initially proposed by the senate. Governor  
8 Edgar used his amendatory veto power to change  
9 this particular statute. It was originally  
10 proposed to be a three-year statute of  
11 limitations. And it only applies to cases  
12 where the allegation is the use of unreasonable  
13 or excessive force.

14 The governor did use his  
15 amendatory veto power to recommend a five-year  
16 statute of limitations. And that was then what  
17 was approved and became the statute.

18 And he actually wrote a detailed  
19 rationale for his actions as to why he was  
20 increasing that to five years.

21 And essentially what he was doing  
22 was modeling it after the five-year statute of  
23 limitations in federal civil rights cases, 1983  
24 actually. So that's essentially what he was

1 doing was modeling it after that five-year  
2 statute of limitations.

3 I think it's important to point  
4 out that it's very specific and very limited  
5 and only applies to unreasonable force cases.

6 I think it's also important to  
7 note that the bill did preempt home rule units  
8 from exercising any powers or enacting any laws  
9 inconsistent with the statute of limitation.  
10 That was also part of legislation.

11 Which brings us to this portion  
12 of the collective bargaining agreement, section  
13 6.1/D. I think it's important to draw the  
14 distinction right off the bat that that applies  
15 to initiating investigations or reopening  
16 investigations. Or reinvestigating any  
17 misconduct concerning any incident.

18 The statute that is before us is  
19 very specific and very limited, which applies  
20 to the filing of charges within five years on  
21 only cases that involve excessive force.

22 This portion of the collective  
23 bargaining agreement talks about allowing the  
24 Superintendent to give written authorization to

1 investigate, reinvestigate or reopen old  
2 investigations for any type of misconduct.

3 But they're still prohibited on  
4 excessive force cases from filing Police Board  
5 cases.

6 They can certainly investigate,  
7 reinvestigate, reopen if the Superintendent  
8 gives the written authorization, and the  
9 officer if it is sustained at that point, still  
10 can discipline a police officer. But what they  
11 can't do on excessive force cases is file a  
12 Police Board charge. In other words --

13 HEARING OFFICER JOHNSON: You can have a  
14 pension --

15 MR. FAHY: Certainly.

16 HEARING OFFICER JOHNSON: Or actually in a  
17 non-excessive force case.

18 MR. FAHY: In a non-excessive force case  
19 you can still file a Police Board case.  
20 Obviously that would potentially trigger other  
21 issues, but outside of the statute that is  
22 10-1-18.1.

23 So I think it's important to draw  
24 that distinction between investigations and the

1 filing of a Police Board charge when the  
2 allegation or the alleged misconduct is  
3 unreasonable force that was used by the police  
4 officer.

5 So in that sense, this really  
6 doesn't apply to the case that's before the  
7 Board. And it certainly does allow the  
8 Superintendent to still discipline officers,  
9 and it certainly allows the Superintendent to  
10 file police Board Charges on misconduct other  
11 than excessive force cases.

12 So that's the only thing I point  
13 out.

14 HEARING OFFICER JOHNSON: Okay. Anybody  
15 want to say anything else at this point?

16 MS. JACKSON: No.

17 HEARING OFFICER JOHNSON: What we're going  
18 to do is, the Board did look at the whole case.  
19 This issue came up and so we wanted to get  
20 everyone's ideas and thoughts out on the  
21 record before the Board makes a decision.

22 But now the Board will have that  
23 and so the Board can make a final decision on  
24 the motion and if necessary the merits.

1 MS. JACKSON: That's my only question.  
2 Will the Board kind of flush out its opinion on  
3 this issue?

4 I mean it will probably be  
5 pretty instructive to the Superintendent going  
6 forward.

7 HEARING OFFICER JOHNSON: I'm sure that  
8 the Board will do that. Can I say that, Max?

9 MR. CAPRONI: Yes.

10 HEARING OFFICER JOHNSON: So, right, this  
11 is emerging is as an important issue, so this  
12 is one aspect of it it seems to me. So, yeah.  
13 I'm sure the Board will write something.

14 MS. JACKSON: Thank you.

15 MR. FAHY: Thanks.

16 WHICH WERE ALL THE PROCEEDINGS HAD.

17

18

19

20

21

22

23


24



1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )  
4

5 MAUREEN A. WOODMAN, C.S.R., being first  
6 duly sworn, says that she is a court reporter  
7 doing business in the City of Chicago; that she  
8 reported in shorthand the proceedings had at  
9 the status of said cause; that the foregoing is  
10 a true and correct transcript of her shorthand  
11 notes, so taken as aforesaid, and contains all  
12 the proceedings of said status.



16   
17 MAUREEN A. WOODMAN  
18  
19  
20  
21  
22  
23  
24

BEFORE THE POLICE BOARD  
OF THE CITY OF CHICAGO

ORIGINAL

IN THE MATTER OF CHARGES )  
FILED AGAINST ) Case No. 11-2776  
P.O. BRUCE ASKEW. )  
)

REPORT OF PROCEEDINGS had at the

status hearing in the above-entitled matter

before Mr. Thomas Johnson, Hearing Officer, at

30 North LaSalle Street, Suite 1240, Chicago,

Illinois, on May 4th, 2012, at the hour of 2:00

p.m.

- - - - -

APPEARANCES:

CITY OF CHICAGO  
DEPARTMENT OF LAW  
LABOR DIVISION  
BY: MS. WYNTER JACKSON and  
MS. ANGELA THOMAS  
30 North LaSalle Street  
Suite 1020  
Chicago, Illinois 60602,

On behalf of the Superintendent;

MR. WILLIAM N. FAHY,

On behalf of the Respondent;

POLICE BOARD OF THE CITY OF CHICAGO  
MR. MAX CAPRONI

1 HEARING OFFICER JOHNSON: On the record.  
2 So I'm calling the case of Police Officer Bruce  
3 Askew, case number 11-2776.

4 If counsel could identify  
5 themselves for the record.

6 MS. JACKSON: Wynter Jackson for the City  
7 of Chicago, Superintendent McCarthy. And  
8 Angela Thomas is present.

9 MR. FAHY: Good afternoon. My name is  
10 Will Fahy, F-A-H-Y. I represent the respondent  
11 Police Officer Bruce Askew.

12 HEARING OFFICER JOHNSON: We are convening  
13 in accordance with the order that I entered on  
14 April 12th. The Board wanted to get answers to  
15 several specific questions that are set forth  
16 in that order.

17 The Board also wanted to get  
18 those answers both in writing, which has been  
19 supplied, each side has filed another  
20 supplemental brief.

21 And the Board also wanted to  
22 convene with the parties at a hearing to  
23 discuss some of the issues that are raised.

24 So I've had a chance to look at

1 the briefs and look at the law that was cited.

2 And I guess I would like to start  
3 with the City, to make sure that both I and the  
4 Board understand the City's position. So maybe  
5 using the order as a way to discuss it.

6 As I understand it, the City's  
7 position is that Section 10-1-18.1, the  
8 five-year limitations provision on the filing  
9 of charges in excessive force cases would in  
10 the absence of a collective bargaining  
11 agreement apply in this case.

12 And I read your brief to say that  
13 while the City of Chicago as a home rule unit  
14 did in 1976 and again in 1981 adopt its own  
15 home rule human resources ordinance, it in both  
16 occasions specifically exempted the Police  
17 Board and -- in terms of the manner of the  
18 Police Board selection composition as well as  
19 its powers and duties.

20 And so while the City adopted its own  
21 personnel code, that activity did not in any  
22 way interfere with the applicability of  
23 10-1-18.1.

24 Is that -- am I understanding

1       that right?

2               MS. JACKSON: Yes, I think you have it  
3       understood correctly.

4                       The most recent version of the  
5       municipal code applicable is 1990. So 1976,  
6       1981 they're virtually the same as the present  
7       form of the 1990.

8               HEARING OFFICER JOHNSON: Okay. And then  
9       the first question that's really asked is what  
10      about section 10-1-18.2, which is the provision  
11      of state law that says that as a home rule  
12      unit, Chicago, or any other home rule unit  
13      cannot escape the provisions of section  
14      10-1-18.1?

15                      You agree with that as I  
16      understand it?

17               MS. JACKSON: Yeah. Our position really  
18      hasn't changed on that since we were before you  
19      last.

20                      We don't state that by virtue of  
21      us being a home rule unit that's how the  
22      five-year statute of limitations doesn't apply  
23      or isn't applicable.

24                      We say that it's the collective



1 bargaining agreement section 6.1(d) that trumps  
2 or supersedes the five-year statute of  
3 limitation in 18.1.

4 So, in essence, we're not stating  
5 the 18 -- strike that.

6 We're not stating that our home  
7 rule unit status is what allows us to say that  
8 the five-year statute of limitations doesn't  
9 apply. That's not our argument.

10 Q. Okay. That's good. That's helpful,  
11 clarifying. It's clear.

12 And, in fact, yes, as I  
13 understand it, what you're saying is the City  
14 negotiated a collective bargaining agreement  
15 with the FOP and did so under the Illinois  
16 Public Labor Relations Act, right?

17 MS. JACKSON: Yes.

18 HEARING OFFICER JOHNSON: And then you're  
19 relying on a provision there, 6.1(d) of the  
20 collective bargaining agreement that  
21 essentially modifies or trumps the five-year  
22 limitation rule?

23 MS. JACKSON: Yes, I agree with that.

24 And I would just augment it

1 slightly to say specifically before you get to  
2 6.1(d), the Illinois Public Labor Relations Act  
3 section 15 talks about the act taking  
4 precedent.

5 And our position is that the act  
6 takes precedent when it comes to terms of  
7 employment -- when there is another law on  
8 issues of employment, the Labor Relations Act  
9 trumps those other laws.

10 And our position is the Labor  
11 Relations Act trumps, supersedes via 6.1(d) the  
12 five-year statute of limitations. That's how  
13 we -- I'm sorry, that's how we're saying that  
14 it would get to 6.1(d).

15 HEARING OFFICER JOHNSON: This was sort of  
16 the component of the City's argument that we  
17 were -- we didn't really have last time, which  
18 is how is it that the collective bargaining  
19 agreement comes to have this status over a  
20 state statute that can't be ever changed by a  
21 home rule unit. And you are relying on 5 ILCS  
22 315/15, right?

23 MS. JACKSON: Yes.

24 HEARING OFFICER JOHNSON: Now, that

1 has -- of course, that's the second question  
2 that we ask, because we stumbled on to this  
3 ourselves. And -- but 315-15/15 has two  
4 subsections. And the -- or has three  
5 subsections, but two that would be pertinent.  
6 And A and B. You are relying on A; is that  
7 right?

8 A. I think we would take them together.  
9 The provision that's specifically cited in our  
10 brief is B, where it talks about  
11 the -- about -- B relates to A, so we would  
12 take both of those together.

13 Q. Okay. Well, so let's get into it this  
14 way, because in looking at the cases, one of  
15 the cases that I read is the AFSCME case, which  
16 I have to be careful because there's two of  
17 those.

18 But I think it's the 1991  
19 Illinois Supreme Court AFSCME case. And  
20 in -- that is a case that involved the mental  
21 health workers. So you had some mental health  
22 workers who were being discharged because of  
23 alleged abuse of mental health patients.

24 And they -- they -- these mental

1 health workers were represented by AFSCME.  
2 They had a collective bargaining agreement.

3 The collective bargaining  
4 agreement had a just cause provision.

5 And so they wanted to through the  
6 grievance arbitration mechanism go up through  
7 the process and essentially argue for a  
8 suspension instead of a discharge, which you  
9 would normally be able to do in any just cause  
10 collective bargaining situation.

11 But the Department of Mental  
12 health who had -- who was the opposing party in  
13 the grievance process, in addition to having  
14 this collective bargaining agreement went and  
15 passed a regulation that said, you know, when  
16 it comes to patient abuse, then we have a zero  
17 tolerance policy and you have to be fired.

18 And so the issue became, well,  
19 what governs. And the Supreme Court using this  
20 315/15(b) said, no, the department can't  
21 negotiate with people in a collective  
22 bargaining setting, arrive at some agreement,  
23 and then backdoor them by saying, oh, but on  
24 this issue we have an absolute rule.

1                   Now, they cited B and  
2     if -- subsection B.

3                   So that says -- that says any  
4     collective bargaining agreement between a  
5     public employer and a labor organization  
6     executed pursuant to this act shall supersede  
7     any contrary statutes, charters, ordinances,  
8     rules, or regulations relating to wages, hours,  
9     and conditions of employment, and employment  
10    relations adopted by the public employer or its  
11    agents.

12                  So that was that case where the  
13    same employer that was -- negotiated the  
14    agreement turned around and came up with a rule  
15    that was different than what was in the  
16    collective bargaining agreement. So the state  
17    says, well, you can't do that.

18           MS. JACKSON: Yeah, we cited to that case  
19    on page six of eight of our brief. And I think  
20    the public employer there wanted to say, well,  
21    let's go to the Civil Service Commission  
22    because we like the way they do it better.

23           HEARING OFFICER JOHNSON: But here's the  
24    difference between that case and the present

1 one, which is that the party that negotiated  
2 the collective bargaining agreement with the  
3 FOP here is the City. Okay. And the City  
4 didn't then go and pass a regulation or a  
5 statute that backdoored its collective  
6 bargaining agreement.

7 In other words, subsection B  
8 seems to depend -- unless I'm not reading it  
9 correctly, seems to depend on the same public  
10 employer who's bargaining -- same public  
11 employer that who entered into the collective  
12 bargaining agreement, now goes and on its own  
13 says, oh, but we're going to have a different  
14 rule on this.

15 And I guess in tribute to the  
16 collective bargaining process says, no, no, no,  
17 we're not going to do that. We're going  
18 -- whatever the collective bargaining agreement  
19 says holds.

20 But that's not our case here.  
21 That's not the Askew case.

22 So the tension is not between  
23 what the City negotiated in a bargaining  
24 agreement and some City rule that got put out.



1 MS. JACKSON: Right. I think the purpose  
2 of our citing to this case is to show support  
3 for the Illinois public policy, that because  
4 there is this duty to bargain with the public  
5 employer and the employee, the significance of  
6 that duty, this section 15-A and B, put teeth  
7 behind the duty to bargain.

8 You can't say you have to sit  
9 down at the bargaining table and thereafter  
10 come to an agreement. And then when you feel  
11 like it or when the agreement doesn't suit your  
12 best interest at some point in time opt for  
13 some other avenue.

14 The point is to say, Police  
15 Board, members of the Board, Mr. Hearing  
16 Officer, the significance of the CBA is  
17 paramount here.

18 It takes -- it's paramount to the  
19 extent that, number one, in Illinois, there is  
20 a duty to bargain, period. You have to sit  
21 down at the bargaining table. You don't have  
22 to come to an agreement. But we did.

23 And because there is that duty,  
24 because we came to that agreement, you should

1 see that Illinois courts hold it to such a  
2 significant standard. That was our purpose in  
3 including that case.

4 HEARING OFFICER JOHNSON: Right. And  
5 there's no doubt that there's a great value  
6 placed on the virtues of collective bargaining  
7 with respect to public employees in the state  
8 statutes. But subsection B as construed by  
9 that case, I am questioning whether that really  
10 applies, because the public employer here is  
11 not the one seeking to subvert the collective  
12 bargaining agreement.

13 MS. JACKSON: Well, I think it further  
14 supports our point that even there, when there  
15 was one of the parties to the CBA wanting to  
16 augment its position by agreement, the courts  
17 wouldn't even let it do it.

18 So here when we don't want to opt  
19 out of our agreement, because we say section  
20 6.1(d) prevails, then I think it strengthens  
21 our position that we need to look to the prior  
22 agreement, 6.1(b). And that's what supersedes.

23 And the act is clear that it  
24 supersedes any contrary laws that pertain to

1 employment matters. And section 15(b), it  
2 makes it very clear.

3 Q. Well, the actual -- the language  
4 that's in 13 -- 315/15 that helps you is  
5 actually in A, right? Because A is where it  
6 says that the provisions of a collective  
7 bargaining agreement are going to prevail and  
8 control in certain circumstances.

9 So -- but then looking at A,  
10 here's the question that we have been tossing  
11 around, because you have to have some state  
12 statute that elevates this collective  
13 bargaining agreement. Just by itself it's just  
14 an agreement. Okay.

15 How can that trump a  
16 state -- the five-year limitations statute,  
17 which obviously the legislature felt very  
18 seriously about because it said nobody can  
19 change this based on home rule.

20 You have to find some vehicle to  
21 elevate your collective bargaining agreement.

22 So A does say under certain  
23 circumstances, collective bargaining agreement  
24 negotiated shall prevail and control.

1 But then what are those  
2 circumstances.

3 So it says -- at the beginning of  
4 A it says in case of any conflict between the  
5 provisions of this act, so that's the state  
6 labor act. In case of any conflict between the  
7 provisions of this act and any other law,  
8 executive order, or administrative regulation  
9 relating to wages, hours and condition of  
10 employment and employment relations, the  
11 provisions of this act or any CBA under this  
12 act control.

13 But so in talking about this with  
14 the Board, one of the things we've been  
15 thinking about is, well, what is the conflict,  
16 the predicate conflict between -- what is  
17 the -- what is the state's labor act in  
18 conflict with? The statute says it's got to be  
19 in conflict with another law on an executive  
20 order or an administrative regulation relating  
21 to wages. So what is the conflict?

22 MS. JACKSON: Well, our point here, Mr.  
23 Hearing Officer, is that we don't see a  
24 conflict with -- the question pursuant to the

1 April 12th order was, is there a conflict  
2 between section 6.1(d) and 18.2. We don't  
3 think they have to be reconciled for this Board  
4 to rely on 6.1(d).

5                   However, to the extent that the  
6 Board finds there to be a conflict, because  
7 again our premise is that home rule unit status  
8 does not allow us to get out of the five-year  
9 statute of limitations. So we're not -- just  
10 to backtrack with that in mind, it's by virtue  
11 of the Board's question, well, how do you  
12 reconcile 18.2 and/or the five-year statute of  
13 limitations, the 18.1, with 6.1(d)?

14                   To the extent that the Board sees  
15 a conflict, we say section 15-A and B say the  
16 CBA supersedes. So we look to 6.1(d).

17                   HEARING OFFICER JOHNSON: But what is the  
18 -- the way I am reading 315/15-A, in order to  
19 get to the language that says a collective  
20 bargaining agreement has to -- will prevail,  
21 you first have to show a conflict between the  
22 provisions of the labor act and some other law,  
23 executive order or regulation. Or do you not  
24 read it that way?

1 MS. JACKSON: That's my whole point. The  
2 Superintendent does not see a conflict here.

3 But by -- it appears that the  
4 Board sees a conflict with this most recent  
5 order.

6 So our response is if you see a  
7 conflict with the CBA and 18.1 or 18.2, then  
8 this should give you comfort that the -- by  
9 virtue of the act, the CBA takes precedent.  
10 The CBA supersedes any conflict you see. We  
11 don't see a conflict.

12 HEARING OFFICER JOHNSON: But you are  
13 talking about the conflicts between the terms  
14 of 6.1(d) and the five-year limitations. Okay.

15 So that's a conflict between the  
16 collective bargaining agreement and the  
17 five-year limitation statute.

18 But what I'm saying is, you're  
19 relying on 315/15 as the vehicle by which the  
20 collective bargaining agreement in some way  
21 could prevail.

22 But there's a predicate in this  
23 statute before the collective bargaining  
24 agreement is looked to at all. This statute



1 says we've got to have a conflict between the  
2 labor act and some other law, executive order,  
3 or administrative regulation relating to wages,  
4 hours.

5 MS. JACKSON: Thank you for breaking that  
6 down for me again.

7 HEARING OFFICER JOHNSON: The question is,  
8 what is that conflict?

9 MS. JACKSON: We will look to B. And I  
10 think that was my earlier statement a few  
11 seconds ago. We're relying on both A and B  
12 taken together. B says except as provided in  
13 subsection A above, any collective bargaining  
14 contract between a public employer and labor  
15 organization executed pursuant to this act it  
16 shall supersede. We're saying that the terms  
17 of the CBA control.

18 You don't -- there doesn't have  
19 to necessarily be the predicate of a conflict  
20 between two laws.

21 So then if there isn't a  
22 predicate of the conflict, then let's move to B  
23 of this section 15.

24 And it's telling us what to do in

1       that instance and that the CBA prevails.

2               HEARING OFFICER JOHNSON: But then B has  
3       the problem that it seems to allow a collective  
4       bargaining agreement to prevail over a  
5       regulation put out by the same employer that's  
6       bargaining, which is not what you have here.

7               And it's not just the language  
8       that says that. That's what the case said that  
9       construed it, the Supreme Court.

10              So it's meant to prevent a public  
11      employer from subverting collective bargaining  
12      by coming up with its own rules that invade the  
13      issues resolved by the agreement.

14              Do you see what I'm saying?

15              Because the public employer  
16      there, that term is used twice. They're  
17      talking about the same party.

18              And that is truly what the AFSCME  
19      case was about.

20              So B seems to be a problem, but  
21      perhaps, and I don't know if this is where the  
22      City's at, perhaps under A the conflict could  
23      be between the provisions of this labor act,  
24      which says -- the labor act says you have a

1 duty to bargain. We respect the bargains that  
2 you make, et cetera. The conflict is between  
3 the provisions of the act and another law  
4 relating to employment relations.

5 Well, that law could be  
6 theoretically the five-year limitations  
7 provision.

8 MS. JACKSON: That's our point.

9 HEARING OFFICER JOHNSON: Is that your  
10 position?

11 MS. JACKSON: Yes.

12 HEARING OFFICER JOHNSON: Because if  
13 that's true, that would be one way to read it.  
14 That then says, oh, now we've got a conflict,  
15 now what do we do? And then you use the  
16 language, well, you know, what we do is we look  
17 to the bargaining agreement. That would be one  
18 way to look at it, assuming the five-year  
19 limitations law is in conflict with the labor  
20 act.

21 MS. JACKSON: We would agree with that  
22 position, Mr. Hearing Officer. And would not  
23 limit the reading of subsection B only to state  
24 that public employer, you can't backdoor or

1        somehow try to create a rule that's outside the  
2        CBA.

3                        We don't believe that all of the  
4        cases related to section B make that statement.  
5        AFSCME does.

6                        But our position in B is that  
7        what you just stated about it, the CBA  
8        superseding any contrary laws.

9                Q.    Okay. Well, these are the struggles  
10       the Board is having to even get to the question  
11       of whether to look at the collective bargaining  
12       agreement.    Okay.

13                        So these are all questions about  
14       is there something that gives the bargaining  
15       agreement some status.

16                        But I am glad that we're all on  
17       the same page as to what that statute might be.

18                        So let's go -- let's assume for  
19       the purposes of argument that something in  
20       315/15 lets us look at the collective  
21       bargaining agreement.

22                        Then the question is, and this is  
23       the last time that we posed, which is, is there  
24       a conflict between 6.1(d) of the bargaining

1 agreement and the five-year limitations  
2 statute?

3 And you started into that and I  
4 cut you off.

5 So is there a conflict between  
6 those two, so that we have to look to the  
7 bargaining agreement?

8 MS. JACKSON: 6.1(d) and --

9 HEARING OFFICER JOHNSON: And the  
10 five-year limitations statute.

11 MS. JACKSON: I would -- again, our  
12 position is that those two don't necessitate  
13 reconciliation. They don't have to agree in  
14 order for us to look at 6.1(d).

15 Our whole premise is with this  
16 duty to bargain, with the public policy of  
17 Illinois. The parties coming to the table  
18 together and making their agreement is what is  
19 paramount.

20 So we need to look to 6.1(d) as  
21 what did the parties agree to? And look at the  
22 language as it is there. We don't need to  
23 compare or reconcile 6.1(d) with the five-year  
24 statute of limitations.

1                   That's the clear intent of the  
2                   language that the parties agreed to.

3                   They agreed to allow the  
4                   Superintendent in writing to reopen,  
5                   reinvestigate allegations, any allegation,  
6                   because it does not limit the allegation that  
7                   becomes known to the department.

8                   HEARING OFFICER JOHNSON: Okay. But  
9                   so -- so I hear you saying that apart from  
10                  anything in 315/15, you just -- you believe  
11                  that there's enough of a value placed upon  
12                  public employee collective bargaining to say  
13                  when there's a contract, that contract always  
14                  will in the face of a conflict supersede any  
15                  other state statute?

16                  MS. JACKSON: That statement I would agree  
17                  with, but I would say you don't have to say  
18                  apart from section 15-B. 15-B supports that  
19                  idea.

20                  HEARING OFFICER JOHNSON: Okay. So then  
21                  let me just -- I'll get to Mr. Fahy in a  
22                  second.

23                               So let's assume for a second that  
24                               we, the Board, can look at 6.1(d) of the



1 bargaining agreement.

2 If we're just looking -- so  
3 6.1(d) as I read it authorizes or gives the  
4 Superintendent power to authorize the opening  
5 of an investigation into an incident that  
6 occurred more than five years ago, right?

7 MS. JACKSON: Right.

8 HEARING OFFICER JOHNSON: So let's take it  
9 as applied to the Askew case.

10 In Askew there is no dispute that  
11 the complaint to the department happened the  
12 day of or the day after the incident on the  
13 front porch.

14 MS. JACKSON: Yes, no dispute.

15 HEARING OFFICER JOHNSON: So the  
16 collective bargaining agreement really has  
17 no -- one way to look at it is the collective  
18 bargaining agreement really has no application  
19 to the facts of this case, because the  
20 Superintendent began its investigation right  
21 after it was reported to the Superintendent,  
22 and, you know, opened the investigation within  
23 a day of when it was reported to them and  
24 within a day or two of when the incident

1 occurred.

2                   There was no need to go more than  
3 five years back in this case. They got after  
4 it right away. Right?

5                   So then the question is, well,  
6 but then the investigation lasted five years  
7 plus.

8           MS. JACKSON: Yeah, five years.

9           HEARING OFFICER JOHNSON: But the City's  
10 position is, even though the collective  
11 bargaining agreement doesn't really have any  
12 application to this case, because there was a  
13 very prompt investigation, the five-year  
14 limitations on filing a charge against an  
15 officer doesn't apply.

16           MS. JACKSON: Can you say that one more  
17 time, please?

18           HEARING OFFICER JOHNSON: Okay. So when I  
19 look at the collective bargaining agreement  
20 applied to the Askew case, it has no operative  
21 effect.

22                   The Superintendent did not have  
23 to go more than five years back to look at  
24 something.

1                   It didn't have to start an  
2                   investigation into an incident that happened  
3                   more than five years ago.

4                   The Superintendent got prompt  
5                   notice of this and promptly started the  
6                   investigation.

7                   So the -- but what happened was  
8                   that investigation went forever. It went five  
9                   years plus.

10                  So I don't see how it would be  
11                  fair, proper, to use 6.1(d) to say that  
12                  five-year limitations on when you can charge  
13                  the officer doesn't apply.

14                  In other words, to me it seems  
15                  like there's two different -- they're two  
16                  different things that these provisions are  
17                  trying to get at.

18                  MS. JACKSON: Well, Mr. Hearing Officer,  
19                  our position is that 6.1(d) does apply to the  
20                  Askew case, and potentially to similar cases  
21                  that come before the Board, because the  
22                  argument can be made, and I think it was made,  
23                  or the predicate to this whole conversation was  
24                  that the charges were filed five years after

1 the incident in question. And I think  
2 precisely five years and almost a month later  
3 the charges were filed before this Board.

4 So I would really urge the  
5 members of the Board to look at this in a very  
6 practical common sense way and not to abandon  
7 that practicality, because if the  
8 Superintendent bargained to be able to act upon  
9 these types of cases, then I believe that you  
10 were correct the first time we discussed this,  
11 about the sort of historic background to that  
12 being the Burge cases at that time. Then there  
13 was a need, and obviously FOP agreed at the  
14 bargaining table, there was a need to look into  
15 matters that became known after five years.

16 And if you look into those  
17 matters, and that happens with the department  
18 via a CR investigation, there's -- if there's a  
19 finding, and we're talking about findings on  
20 excessive force cases, and that's why  
21 pragmatics and common sense can't be abandoned  
22 here, then the Superintendent is going to act  
23 on those findings if they're sustained.

24 And if you're talking about

1 excessive force cases, we're not going to issue  
2 a suspension below 365 days.

3 We're going to come to the Board  
4 and ask the Board to discharge that officer.

5 So 6.1(d) our position allows the  
6 Superintendent to file charges and to act upon  
7 these matters outside of five years.

8 Q. Right. And I agree with you that the  
9 statute came out of the Burge experience.  
10 Okay. And there was lots of public debate  
11 about how far back in time a police  
12 investigation could go. So there's something  
13 that's covered up. There's something that  
14 doesn't come out into the light until years  
15 later. Then can the police department go back  
16 and unearth what happened and figure it all  
17 out, sort of as they did in Burge.

18 And the statute probably promoted  
19 by the FOP, I don't know that for a fact, but  
20 probably said, well, that was an effort to get  
21 at that.

22 And then this bargaining  
23 agreement sort of modifies it.

24 MS. JACKSON: Is an outgrowth of it.

1           HEARING OFFICER JOHNSON: Is an outgrowth  
2 of it.

3                   And as you say, perhaps the FOP  
4 that bargained this agreement got something  
5 really good on wages or vacation pay or who  
6 knows what.

7                   So they surrendered something  
8 perhaps they had won in the legislature.

9                   But what I'm concerned about is  
10 in the Askew case, it's just the way to  
11 illustrate. To me it seems like 6.1(d) is  
12 about how far back you can go when you look  
13 at -- when you look to begin an investigation.

14                   The statute's about how quick  
15 that investigation has to occur before a charge  
16 is filed.

17                   Now, as you say, we have the  
18 theoretical situation of, oh, we're going to  
19 look at something that's ten years ago that  
20 involves excessive force.

21                   Now we've looked at it. We've  
22 done an investigation. And now we want to  
23 charge somebody. But, oh, it's more than five  
24 years since the date.



1                   But can't investigations produce  
2 more than just charges against police officers,  
3 that is charges -- Police Board charges against  
4 police officers?

5           MS. JACKSON: Sure. The investigation  
6 could be unfounded, unsustained, exonerated,  
7 sustained. And as a result of that, dependent  
8 upon the investigator's penalty recommendation,  
9 it may or may not go through command channel  
10 review.

11                   After that process, that's when  
12 the decision of discharge or something lower  
13 than is made, and when that discharge decision  
14 is made, that's when charges are necessitated  
15 provided the law department agrees and provides  
16 those charges.

17                   But our point when we're talking  
18 about excessive force cases is that the  
19 Superintendent, I mean provided that the facts  
20 are sustained on excessive force cases, would  
21 not want to discipline an officer anything  
22 short of discharge, because in our view that  
23 would be one of the highest ways that an  
24 officer can denigrate the public trust, is to

1 abuse the police powers.

2 So the pragmatics of your  
3 question is, can't you do something other than  
4 discharge, come before the Board with charges?  
5 Well, sure. The Superintendent in and of his  
6 own power can issue discipline short of 365  
7 days.

8 If the facts warrant that. But  
9 if we're just talking generally for excessive  
10 force cases, that doesn't seem sufficient.

11 HEARING OFFICER JOHNSON: So you brought  
12 up one circumstance where someone can do an  
13 investigation and not end up charging a police  
14 officer. Obviously one case is you can do an  
15 investigation and find out nothing untoward  
16 happened and there's no charges filed.

17 Another situation is you can  
18 propose a sanction short of discharge in which  
19 case there wouldn't -- actually, it's really  
20 short of -- don't we get 60-day cases or --

21 MS. JACKSON: Uh-huh.

22 HEARING OFFICER JOHNSON: Short of  
23 whatever the Police Board's jurisdictional  
24 limit is. Okay.

1 But there's other things. The  
2 police department could investigate something,  
3 determine that there was criminal conduct and  
4 turn that investigation over to the United  
5 States attorney, or the state's attorney. The  
6 police department could investigate, couldn't  
7 they, in fact --

8 MS. JACKSON: Yeah, they could. To that  
9 point, Mr. Hearing Officer, that would happen  
10 when the investigator makes a conclusion.

11 So I guess I want to retract a  
12 little bit on the earlier concession I made, is  
13 that the Department learned about it on the day  
14 of the complaint. Yes, we learned about it.

15 But theoretically, and for  
16 argument purpose, we didn't come to a  
17 conclusion about the force that was made until  
18 that investigation was concluded.

19 So Askew, you know, just for the  
20 sake of argument, could have used his baton.  
21 They complained and it could have been  
22 rightful, a rightful use of force. And then we  
23 say, yes, he used his baton. That would be  
24 categorized as exonerated. The conduct

1 occurred but it was in line with policy.

2 So the argument also can be made  
3 in addition to the argument that we learned  
4 about the activity the day of or the day after  
5 when Askew's -- the family made the complaint.

6 The argument can also be made in  
7 the alternative that we learned about the  
8 conduct when the investigation was concluded,  
9 and we came to a decision that Askew's behavior  
10 was outside of policy.

11 If that's the case, then we acted  
12 promptly because charges were filed shortly  
13 after the investigation was concluded.

14 So our official position would be  
15 what the investigation -- the outcome of the  
16 investigation, which was sustained.

17 HEARING OFFICER JOHNSON: Well, okay. But  
18 the five-year time limit under this statute  
19 runs from the commission of the act on which  
20 the charge is based. So it's not going to run  
21 from --

22  
23 MS. JACKSON: You're talking about the  
24 statute?

1           HEARING OFFICER JOHNSON: Yeah, the  
2 five-year statute.

3                     But my point -- what I'm trying  
4 to get at, is there really a conflict between  
5 the collective bargaining agreement provision  
6 and the state statute?

7                     Because you could read these as  
8 looking at two different processes. The  
9 bargaining agreement looks at what incidents  
10 can be investigated. The statute says what is  
11 the limitations period for actually filing  
12 Police Board charges.

13                    So investigations can lead to, as  
14 you point out, discipline less than a charge  
15 before the Police Board. It can lead to an  
16 exoneration. It can lead to a development of a  
17 record to give to a criminal prosecutor.

18                    It can lead to the police  
19 department deciding they are going to do  
20 something differently when it comes to  
21 excessive force cases, but look what happened  
22 here and we can't have this happen again.

23                    So I don't know if there's  
24 necessarily a conflict, even though you can

1 articulate something that looks like a  
2 conflict.

3 MS. JACKSON: Well, Mr. Hearing Officer, I  
4 think those scenarios -- and also just to add  
5 to your list of what it could lead to, it could  
6 lead to discharge.

7 6.1(d) authorizes the  
8 Superintendent to act on sustained findings as  
9 he sees fit. So if the Superintendent wants to  
10 bring charges, 6.1(d) says he can.

11 But the scenario you just  
12 presented abandons and forgets the historical  
13 context for 6.1(d).

14 We don't have to -- our position  
15 is that there is no reason, no necessity to  
16 reconcile the five-year statute of limitations  
17 with 6.1(d).

18 6.1(d) is an outgrowth of the  
19 general assembly enacting the five-year statute  
20 of limitations.

21 We look solely to 6.1(d). We  
22 don't look to them together. We don't need to  
23 combine them. We don't need to contrast them.

24 The Superintendent, the FOP said



1 this is how we want to do things in the City of  
2 Chicago's Police Department. 6.1(d)  
3 supersedes. It in no way limits. 6.1(d)  
4 supersedes the five-year statute of  
5 limitations. It in no way limits what the  
6 Superintendent can do once he is actually  
7 absolutely silent on what the Superintendent --  
8 what happens after these cases are reopened or  
9 reinvestigated.

10 HEARING OFFICER JOHNSON: It doesn't  
11 actually say, does it, in 6.1(d) that anything  
12 about the filing of charges. It just says the  
13 investigation can be made the subject of a  
14 complaint register investigation, right? Or is  
15 there some part of that I'm missing?

16 MS. JACKSON: It says unless the  
17 Superintendent authorizes it in writing.

18 Our position is that that  
19 authorization was filing charges.

20 HEARING OFFICER JOHNSON: But I'm just  
21 saying the text of the bargaining agreement  
22 doesn't talk about the filing of charges, it  
23 just talks about making something the subject  
24 of a CR investigation.

1 MS. JACKSON: And I think that goes back  
2 to the pragmatics of how things work.

3 You don't file charges just  
4 because a complaint is initiated or the  
5 Department learns about a complaint. It starts  
6 with the CR investigation. Okay.

7 So the Superintendent can begin  
8 with the CR investigation.

9 And that outgrowth is whatever  
10 the disciplinary recommendation is. And here  
11 it was discharge, which necessitated filing of  
12 charges.

13 HEARING OFFICER JOHNSON: Let me give  
14 Mr. Fahy a chance. On the questions we  
15 asked -- I mean the City really is not taking  
16 the position that home rule authority has to do  
17 with anything.

18 MR. FAHY: I think we're all in agreement  
19 on that.

20 HEARING OFFICER JOHNSON: Right.

21 MR. FAHY: When I look at the collective  
22 bargaining agreement, the 6.1(d), and the  
23 statute itself, 18.1, I don't see any conflict  
24 between the two.

1 I mean 18.1, I mean if you look  
2 at the language of the statute and then you  
3 look at the language of the Collective  
4 Bargaining Agreement, 18.1 specifically states  
5 charges, charges based upon a very limited  
6 circumstance. Charges of excessive force.  
7 That's it. Charges being filed with the Police  
8 Board, they have to be filed within five years  
9 of the incident. Okay.

10 And initially when that was  
11 proposed, it was a three-year statute of  
12 limitations.

13 Governor Edgar at the time used  
14 had his amendatory veto powers to increase it  
15 to five years. And he modeled it after the  
16 federal statute, the federal 1983 statute,  
17 which also contains a five-year statute of  
18 limitations.

19 So 18.1 really just deals with  
20 this very narrow issue of excessive force  
21 cases, have to be filed five years from  
22 the -- five years from the time of the incident  
23 that occurred.

24 Obviously that wasn't done in

1 this particular case. And I think we're in  
2 agreement on that.

3 And then if you look at this, the  
4 provision in 6.1(d), and if you look at the  
5 language, first of all, it basically is saying  
6 that any complaint or allegation of police  
7 misconduct that's five years old is suspect at  
8 best.

9 So the question becomes can we  
10 ever initiate an investigation on something  
11 that's five years old.

12 And this is an allegation of  
13 complaint of any type of police misconduct.  
14 Not just excessive force, any police  
15 misconduct.

16 And basically the agreement says,  
17 well, no, you can't. We can't investigate him.  
18 We can't reopen an investigation when it's over  
19 five years old, unless the Superintendent  
20 specifically authorizes it in writing.

21 So what we're talking about is  
22 the initiating investigations that happened  
23 beyond the five-year period or reopening  
24 investigations that are five years old.

1 And possibly making some type of determination  
2 as to those facts.

3 And again, we're dealing with  
4 investigations being opened under this  
5 agreement, which they can absolutely do on any  
6 type of police misconduct.

7 But the problem becomes is it  
8 doesn't trump the five-year statute of  
9 limitations for excessive force. Because we  
10 have a statute, we have a state statute that  
11 governs that that says it has to be brought  
12 within five years.

13 Obviously there might be a  
14 circumstance where the Superintendent of  
15 police -- if some citizen comes forward and  
16 says, you know, five years and one month ago  
17 the police used excessive force on me, maybe  
18 there's some circumstance where the  
19 Superintendent might decide, well, let's  
20 initiate a CR investigation. Let's just see  
21 what happened here and get to the bottom of it.

22 At that point that just triggers  
23 an investigation. That's all it does.

24 And there may be a perfectly

1 valid reason why the Superintendent of Police  
2 would want to do that.

3 Let's get to the bottom of it.  
4 Let's see if there is any -- if this has any  
5 legs. If there's any merit to this.

6 Because if there is a situation  
7 where the investigation shows that there is  
8 some type of sustained finding for any kind of  
9 police misconduct, including excessive force,  
10 the overwhelming majority of cases that are  
11 investigated by IPRA and IAD do not wind up  
12 with charges being brought before the Police  
13 Board.

14 There is still discipline that  
15 can be sanctioned by the Superintendent short  
16 of filing charges. And I think that's  
17 important to note.

18 And if there is something along  
19 the lines of some type of -- if an  
20 investigation unearths some type of  
21 wide-ranging conspiracy to cover up allegations  
22 of wrongdoing, obviously there's referrals that  
23 can be made to the United State's Attorneys  
24 Office, the FBI, that's been done in recent



1 years by the Superintendent. Not this  
2 Superintendent.

3 And you can also refer it for  
4 criminal investigation to the State's  
5 Attorney's Office.

6 But again, those are the very  
7 rare and unusual circumstances of cases. I  
8 mean there are situations where if there's  
9 police misconduct, even if it's not excessive  
10 force, you may want to get to the bottom of it,  
11 just to see what it is and sanction that  
12 officer.

13 And an officer who's sanctioned  
14 on a sustained finding and is punished, that's  
15 something that's going to stay with them and  
16 affect their career and they can mete out the  
17 discipline that's necessary for the  
18 investigation that falls under this collective  
19 bargaining agreement.

20 So I don't see the conflict  
21 between the collective bargaining agreement  
22 6.1(d) and the statute of 18.1.

23 I think they're  
24 basically -- we're comparing apples and

1 oranges. We're comparing Police Board charges  
2 on one hand for very limited circumstance,  
3 excessive force cases only, and on the other  
4 hand what the collective bargaining agreement  
5 is talking about is, you know what, these cases  
6 that are five years old, someone coming forward  
7 with an allegation five years old, we're not  
8 going to initiate a CR number on that. That  
9 should be barred. We're not going to reopen  
10 something that's five years old. It's suspect  
11 at best.

12                   However, if the Superintendent  
13 authorizes it, then we're going to initiate a  
14 CR. We will initiate an investigation and  
15 we'll see where it leads.

16                   But that does not in any way  
17 allow them to then after -- beyond the  
18 five-year period file the charges in excessive  
19 force cases.

20                   So I don't see the conflict  
21 between the language in the collective  
22 bargaining agreement with the statute and, you  
23 know, even if there -- even if the Board should  
24 find that there is some type of conflict

1       between the two, the City is precluded under  
2       the Illinois Municipal Code from essentially  
3       bargaining away what's covered in the state  
4       statute.

5               HEARING OFFICER JOHNSON: I'm glad you  
6       mentioned this. Now you've thrown on the table  
7       another statute, 315/7.

8               MR. FAHY: Yes. And --

9               HEARING OFFICER JOHNSON: So what do you  
10      make of that?

11              MR. FAHY: And my reading of that is that  
12      the City and the public employer can certainly  
13      negotiate, bargain collectively, you know, all  
14      matters with respect to wages, hours, and work  
15      conditions.

16                      But I think it specifically lays  
17      out the one exception, and that is you cannot,  
18      you know, collectively bargain something that's  
19      specifically provided for in any other law. Or  
20      something that is -- would be in violation of  
21      the provision of any other law.

22                      And to me when I read that, the  
23      other law here would be 18.1, the state  
24      statute.

1                   So I guess my point is, is that  
2                   this collective bargaining agreement somehow  
3                   does not prevail over the state statute,  
4                   which -- when I say state statute, I'm  
5                   referring to 18.1.

6                   HEARING OFFICER JOHNSON: So your position  
7                   is there really is no conflict to begin with,  
8                   but if there was --

9                   MR. FAHY: So I sort of took it in reverse  
10                  order that it was laid out, because I don't see  
11                  the conflict.

12                  Even if somehow the Board found  
13                  that there was a conflict, my argument is that  
14                  the collective bargaining agreement can't trump  
15                  the state statute.

16                  HEARING OFFICER JOHNSON: And actually  
17                  this 315/7, I'm glad you brought that to our  
18                  attention. What it does it sort of reinforces  
19                  my thinking of 315/15. Because I think this  
20                  315/15 may well be concerned with harmonizing  
21                  conflicts in -- within state law.

22                  So which is I think why that  
23                  predicate exists in A, which is to say if you  
24                  have got a conflict between the labor law,

1 state labor law, and some other state law, then  
2 it's the labor law and the agreements reached  
3 under it that govern.

4 But -- because if you read the  
5 way the City does, what do you make of 315/7,  
6 which basically says you can't bargain away  
7 something that the legislature has already  
8 decided is right?

9 MS. JACKSON: I think that the Board needs  
10 to read the entirety of the section that was  
11 reflected in Respondent's brief. After --

12 HEARING OFFICER JOHNSON: Okay. I've got  
13 that here someplace.

14 MS. JACKSON: At the bottom, the pages  
15 aren't numbered, but it's listed -- it states,  
16 a public employer and exclusive representative  
17 have the authority and the duty to bargain  
18 collectively.

19 And I'm reading from Respondent's  
20 brief. The duty to bargain collectively shall  
21 also include an obligation to negotiate over  
22 any matters with respect to wages, hours, and  
23 other conditions of employment. And it's  
24 highlighted here, not specifically provided

1     for -- not highlighted, and any other law or  
2     not specifically in violations of the  
3     provisions of any other law.

4                     Then it goes on to say. If any  
5     other law pertains in part to a matter  
6     affecting the wages, hours, and other  
7     conditions of employment, such other law shall  
8     not be construed as limiting the duty to  
9     bargain collectively and to enter into  
10    collective bargaining agreements containing  
11    clauses which either supplement, implement, or  
12    relate to the effect of such provisions in  
13    other laws.

14                    If you read that in its totality  
15    and when you read it in tandem, even with the  
16    case that was cited by Respondent, the Illinois  
17    Fraternal Order of Police -- let me make sure.  
18    Actually, the City of Markham case, it does not  
19    state Section 7 of the act, the Illinois Labor  
20    Relations Act, prohibits the union and the  
21    public employer from bargaining over matters  
22    that are already covered by the code, by the  
23    act, not by a different law.

24                    That's why section 15 as we



1     stated earlier is so paramount, because it says  
2     if there is a contradiction between the other  
3     laws you asked earlier, that section A, if  
4     there is a contradiction between another law in  
5     the code or the act, the Labor Relations Act,  
6     then the code or the act, Labor Relations Act,  
7     trumps.

8                 Section 7 is saying if there is a  
9     conflict between the collective bargaining  
10    agreement and the act, the Labor Relations Act,  
11    then the Labor Relations Act trumps that CBA.

12                It's not saying that parties  
13    cannot bargain over matters that the Illinois  
14    legislature has already made a determination  
15    on.

16                Markham case is saying if the  
17    matter at issue -- the matter that the parties  
18    have bargained for is already provided in the  
19    Illinois Labor Relations Act, then that matter  
20    is improper for the bargaining process.

21                So that would mean here as it  
22    pertains to Askew, that if the Illinois Labor  
23    Relations Act has already said that there's a  
24    statute of limitations on excessive force

1 cases, then FOP and the City can't bargain on  
2 that act on that issue because the act already  
3 stated what it's going to be.

4 That's what Section 7 talks  
5 about. That's what Markham, the case that's  
6 even cited by Respondent's counsel, states.

7 It doesn't state what counsel is  
8 representing to this Board.

9 HEARING OFFICER JOHNSON: But I mean I saw  
10 this sort of remaining portion of section  
11 315/7.

12 And at first I thought that  
13 legislature was giving and then sort of taking  
14 away.

15 But actually what they say is you  
16 have an obligation to negotiate, but you can't  
17 agree on something that's specifically in  
18 violation of the provisions of any law. But  
19 then what your language says is, if that other  
20 law pertains to a matter affecting wages,  
21 hours, and employment, that law shall not be  
22 construed as limiting the duty to bargain and  
23 to enter into agreements that supplement,  
24 implement, or relate to the effect of such

1 provisions in other laws.

2 But what's missing there  
3 conspicuously is you can't come up with an  
4 agreement that nullifies the other law.

5 Like take it out. Do you think  
6 the FOP could reach an agreement that  
7 says -- what's an example of a state law that  
8 says -- I was thinking about residency, but  
9 that's a City ordinance.

10 What's a state law that -- I  
11 mean, well, say there's a state law that  
12 prohibits the use of, you know, drugs in the  
13 workplace or just prohibits the possession of  
14 various drugs.

15 Do you think the FOP could by  
16 collective bargaining say, well, you know what,  
17 we can -- we've decided that our members could  
18 use this drug or could use it and not be  
19 subject to any criminal prosecution, or could  
20 use it, and as long they're in the station  
21 house they're exempt from it or whatever. I  
22 don't think they could. I don't the collective  
23 bargaining goes that far. So I don't know.

24 There's some limits on what you

1 can agree to in collective bargaining.

2 MS. JACKSON: I think it specifically  
3 states that this section should not be  
4 interpreted to tell the public employer or the  
5 union that you can collectively bargain about  
6 issues that are determined or spoken to in  
7 other law.

8 So that means we can come to the  
9 table and we can discuss them and we make  
10 agreements that relate to them.

11 HEARING OFFICER JOHNSON: Yeah, that  
12 contain clauses which either supplement,  
13 implement, or relate to the other provisions of  
14 law.

15 So if I'm Mr. Fahy, I'd say,  
16 okay, fine, the Superintendent and FOP agreed  
17 to -- you know, to allow investigations to  
18 reach way back in time. That certainly relates  
19 to when you can bring charges but it doesn't  
20 nullify it.

21 MS. JACKSON: And to that, Mr. Hearing  
22 Officer, and members of the Board, I would rely  
23 on the premise that I think is long standing in  
24 our nation actually, is that even courts don't

1     reinterpret the provisions of the parties. And  
2     arbitrators who are called to hear matters in  
3     disputes of collective bargaining agreements  
4     don't make their own unilateral interpretations  
5     of the provisions.

6                     So the Board should rely on the  
7     intent of the parties.

8             HEARING OFFICER JOHNSON: As I read it,  
9     the intent of the parties was to allow the  
10    Superintendent to investigate. That's sort of  
11    a different animal than allowing them to bring  
12    charges.

13            MS. JACKSON: Well, it doesn't limit what  
14    the Superintendent can do after the  
15    investigation.

16                    And that goes back to my initial  
17    premise of not looking at this without  
18    practicality.

19                    I mean you have police officers.  
20    So to the point that Respondent's counsel  
21    raised, there can be discipline meted out  
22    that's short of filing charges.

23                    Quite frankly, I don't think that  
24    the public, the citizens of Chicago, would

1 understand a Superintendent looking into an  
2 allegation beyond five years, making a finding  
3 that it happened, and then that officer still  
4 be retained by the police department because  
5 charges can't be filed. It just doesn't make  
6 any sense.

7 HEARING OFFICER JOHNSON: That's your best  
8 argument. There's no question. But there's  
9 two real issues, which is, does something in  
10 the state statutes allow us to look at that  
11 bargaining agreement and let it trump state  
12 law. That's the first.

13 And then the second is there  
14 really a conflict. Or can you construe them  
15 harmoniously. So those are the questions.

16 MS. JACKSON: I guess our point is that  
17 FOP gave up what some of the general assembly  
18 gave them in that statute. And it makes sense.

19 And I would go so far to argue,  
20 Mr. Hearing Officer and members of the Board,  
21 that FOP is protecting when it gets rid of  
22 rogue members who abuse their powers with  
23 excessive force on the citizens of Chicago.  
24 They have an interest in that.

1                   They don't -- most of the members  
2 of the police force are upstanding individuals  
3 who do protect the citizens and do their job  
4 well. So they shouldn't want members of the  
5 force who are going around abusing their powers  
6 as well. It makes them look bad.

7           HEARING OFFICER JOHNSON: Mr. Fahy, is  
8 there anything else you want to add?

9           MR. FAHY: No. I would just reiterate  
10 what I've already said, is that there is no  
11 conflict between this about collective  
12 bargaining agreement section and the state  
13 statute, because quite frankly the collective  
14 bargaining agreement doesn't apply to the Askew  
15 case but the state statute does.

16          HEARING OFFICER JOHNSON: Anything further  
17 from the City?

18          MS. JACKSON: No. We thank you for your  
19 time and attention to this.

20          HEARING OFFICER JOHNSON: Obviously you  
21 can see the Police Board is trying to get this  
22 one right. Not that they don't try to get  
23 everyone right. This one has effect on more  
24 than the Askew case.



1                   So we'll take it back under  
2 advisement and see what the Board decides.

3           MR. FAHY: Thank you.

4           MS. JACKSON: Thank you.

5           HEARING OFFICER JOHNSON: Thanks so much.

6                   (WHEREUPON, the proceedings  
7                   were adjourned.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

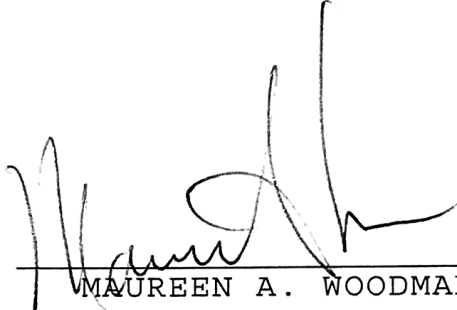
22

23

24

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )  
4

5 MAUREEN A. WOODMAN, C.S.R., being first  
6 duly sworn, says that she is a court reporter  
7 doing business in the City of Chicago; that she  
8 reported in shorthand the proceedings had at  
9 the hearing of said cause; that the foregoing  
10 is a true and correct transcript of her  
11 shorthand notes, so taken as aforesaid, and  
12 contains all the proceedings of said hearing.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

  
MAUREEN A. WOODMAN



COPY

**In The Matter Of:**  
*Chicago Police Board*  
*Bruce Askew*

---

*Report of Proceedings*  
*February 23, 2012*

---

*Wichmann-Klawitter Reporting Ltd.*  
*(312) 368-1228 - Chicago*

Page 1

1 BEFORE THE CITY OF CHICAGO POLICE BOARD  
2  
3 IN THE MATTER OF: )  
4 CHARGES AGAINST )  
5 P.O. BRUCE ASKEW, ) No. 11 PB 2776  
6 Respondent. )  
7 30 North LaSalle Street  
8 Suite 1220  
9 Chicago, Illinois 60602  
10 February 23, 2012  
11 11:00 o'clock a.m.  
12  
13 PRESENT: Mr. Thomas E. Johnson, Hearing Officer  
14 Mr. Max Caproni, Executive Director  
15 Ms. Wynter C.N. Jackson,  
16 City of Chicago Corporation Counsel,  
17 on behalf of the Superintendent;  
18 Mr. William N. Fahy,  
19 on behalf of the Respondent.  
20  
21  
22 REPORTED BY: DANIEL M. PRISCU, CSR.  
23 License No. 084-003982  
24

Page 2

1 I N D E X  
2 WITNESS DX CX RDX RCX  
3 ALICE LARKINS  
4 By Ms. Jackson 22 52  
5 By Mr. Fahy 38 54  
6  
7 ETTA LARKINS  
8 By Ms. Jackson 56 89  
9 By Mr. Fahy 67  
10  
11 NORMAN PERRY  
12 By Ms. Jackson 91  
13 By Mr. Fahy 102  
14  
15 NORMAN MITCHEM  
16 By Ms. Jackson 123 164  
17 By Mr. Fahy 133  
18  
19 GREG LARKINS  
20 By Ms. Jackson 173 219  
21 By Mr. Fahy 186  
22  
23  
24

Page 3

1 E X H I B I T S  
2  
3 EXHIBIT MARKED ADMITTED  
4 City No. 1 20  
5 City No. 2 20  
6 City No. 3 21  
7 City No. 4 22  
8 City No. 5 36  
9 City No. 6 222  
10 Respondent No. 1 114  
11 Respondent No. 2 201  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Page 4

1 HEARING OFFICER JOHNSON: We are going on  
2 the record in the case of Police Officer Bruce  
3 Askew, case 11-2776.  
4 Could counsel identify themselves for the  
5 record.  
6 MS. JACKSON: Good morning, Wynter Jackson  
7 on behalf of Superintendent McCarthy.  
8 MR. FAHY: Good morning. My name is Will  
9 Fahy. I represent Police Officer Bruce Askew, who  
10 is present with me.  
11 HEARING OFFICER JOHNSON: Officer Askew,  
12 do you acknowledge receipt of a copy of the charges  
13 at least five days prior to today's hearing and  
14 waive reading of those charges and enter a plea of  
15 not guilty to each and every charge?  
16 OFFICER ASKEW: Yes, I do.  
17 HEARING OFFICER JOHNSON: There's one  
18 admonishment I want to make on the record.  
19 Your counsel has a copy of your  
20 Complimentary and Disciplinary Record. Make sure  
21 that that's accurate, either through your counsel,  
22 or through your testimony.  
23 And then it's your choice as to whether  
24 the Board would look at that one way or the other

1 before they find guilt or innocence, so you will  
2 make that decision with your counsel.

3 **OFFICER ASKEW:** Thank you.

4 **MR. FAHY:** Just so we're clear, I'm not  
5 asking the Board to consider that disciplinary  
6 history at all for the reasons I've stated, and if  
7 they do, if the Board deems it appropriate to  
8 consider the disciplinary history, if and only if  
9 upon a guilty finding of the charges.

10 **HEARING OFFICER JOHNSON:** There are legal  
11 issues with respect to that, which we have discussed  
12 and which will be presented to the Board.

13 There is a Motion to Dismiss in this case  
14 that is being briefed. It's going to be taken up  
15 with the merits of the case, and so that motion and  
16 the legal issues connected to it will be discussed  
17 with the Board.

18 So then does the City have an opening  
19 statement?

20 **MS. JACKSON:** Yes, we do.

21 Good morning, Hearing Officer, Members of  
22 the Board, Counsel.

23 We're here this morning pursuant to  
24 charges that were filed by Superintendent McCarthy

1 after the completion of an Independent Police Review  
2 Authority investigation.

3 The subject of the charges involve  
4 misconduct on behalf of Respondent Askew on  
5 October 7, 2006.

6 On that date at approximately 12:10 p.m.,  
7 Mr. Askew reported to 6408 South Marshfield Avenue  
8 here in the city of Chicago. And he reported to  
9 that address in response to a 911 call that you will  
10 hear, Members of the Board, was made by a resident  
11 of that location, Mr. Norman Perry, Senior.

12 And you'll hear from Mr. Perry, as well as  
13 several of his relatives. You'll hear, Members of  
14 the Board, that that home is property that's owned  
15 by two families, the Larkins and the Perrys. You  
16 will hear from members of that family.

17 You will hear from five individuals of  
18 that family. You will hear from Ms. Alice Larkins,  
19 who is Mr. Greg Larkins' mother.

20 And the charges and allegations involve  
21 particularly Mr. Greg Larkins, and it is our  
22 contention that as a result of Mr. Askew striking  
23 Greg about the head and/or about the shoulder and/or  
24 about his left leg unjustifiably with a baton,

1 Mr. Larkins, and I will just call him Greg, he  
2 received several lacerations on the day in question.

3 Our contention is that the evidence will  
4 show through testimony, as well as through documents  
5 that were procured during the investigation, and two  
6 of which were stipulated to here, or anticipate  
7 being stipulated to here, Mr. Hearing Officer, the  
8 medical records from the Chicago Fire ambulance  
9 report, our contention is that after you hear the  
10 testimonial evidence, you'll hear that Mr. Larkins

11 and his cousin, who is Norman Perry, Junior, or also  
12 referred to as Norman Mitchem, were involved in a  
13 verbal altercation at about noon on the day in  
14 question that turned physical. They were fighting  
15 on their front porch. And then one of the  
16 relatives, Mr. Norman Perry, Senior, Norman's  
17 father, or I think he is a stepfather, I'm not quite  
18 sure about that relationship, but the father called  
19 911, and he wanted the officers to break up the  
20 physical fight. A female officer reported to the  
21 scene thereafter, and she was in a one man car.

22 Thereafter, Mr. Askew reported in a one  
23 man car, and the evidence will show that at the time  
24 Mr. Askew reported to the scene, a few things that

1 are important here, Members of the Board. The fight  
2 was over. There was no longer any fighting between  
3 the cousins.

4 And you will hear from the witnesses that  
5 all of them, each family member, was located at  
6 varying locations near the property or the front  
7 porch.

8 You will hear that Alice Larkins was  
9 standing near the sidewalk. You will hear that Etta  
10 Perry was standing on the front porch near the door.  
11 You will hear that Mr. Norman Perry, Senior, was  
12 also located on the front porch. And, importantly,  
13 you will hear that Greg Larkins was located on the  
14 front porch.

15 And Norman Mitchem, who was fighting with  
16 Greg earlier, was nowhere near the front porch. He  
17 was near the sidewalk near the female officer and  
18 near Alice Larkins.

19 You will hear that Greg continued to talk.  
20 And you will hear that he wouldn't shut up, quite  
21 frankly. And even when Officer Askew asked him to  
22 stop talking, he continued to talk. And Askew  
23 approached Greg on the front porch and made  
24 statements to the effect that, I can arrest you,



Page 9

1 when people are told to do things in my household,  
2 they obey. I can have the whole squad come and  
3 arrest you. He made those types of statements to  
4 Greg.

5 When Greg responded only verbally, never  
6 physically responding at any point before or after,  
7 he was unjustifiably hit by Askew.

8 Greg said, Why are you going to arrest me?  
9 I haven't done anything. And to that Mr. Askew hit  
10 him with the baton, causing seven stitches to be  
11 placed in the back of his head as a result of that.

12 You will hear that there were no injuries  
13 on Greg as a result of the altercation that occurred  
14 between he and his cousin, that the injuries he  
15 sustained were solely as a result of Askew hitting  
16 him with the baton.

17 And our contention is that Mr. Askew  
18 hitting him with the baton in response to him not  
19 doing anything but standing on his porch, and then  
20 even after he hit him, he didn't respond physically,  
21 the testimony will show that after Mr. Askew hit  
22 Greg with the baton, he ran into the home.

23 Mr. Askew never at one point said that  
24 Greg was under arrest. He never chased and followed

Page 10

1 him in an attempt to put him under arrest. And  
2 thereafter, at approximately 8:00 p.m., Greg sought  
3 medical attention.

4 You will hear that he tried to contain the  
5 bleeding himself. You will also hear that once he  
6 became dizzy later on throughout that day, he made  
7 the choice to seek medical attention. And  
8 thereafter, making statements to the medical  
9 professionals about the source of those injuries  
10 being a police officer, the Department was notified.

11 Our contention, Mr. Hearing Officer and  
12 Members of the Board, is that once you hear the  
13 testimonial evidence, and you review the  
14 documentation, you'll see that Greg Larkins  
15 underwent X-Rays of the left knee, and right  
16 shoulder and a CAT scan of his brain.

17 You will see that the X-Ray results of the  
18 left knee revealed no bone or joint pathology, but  
19 the X-Ray results of the right shoulder revealed a  
20 separation of his AC joint.

21 You'll see that he had mild swelling of  
22 the left portion of the his scalp. That was noted  
23 during the CAT scan. And that he received seven  
24 sutures, which I called staples earlier.

Page 11

1 So as a result of that, Mr. Hearing  
2 Officer, and once you review City's Exhibits No. 1  
3 and 2, 1 being the statute at issue here for  
4 battery, and 2 being the Tactical Response Report,  
5 specifically General Order 02-08-05, item 3(a), you  
6 will see that the results of what occurred on that  
7 day necessitated at a minimum Mr. Askew to file a  
8 TRR with the Department. He didn't. And since he  
9 didn't, he violated orders. But most important,  
10 Members of the Board, his actions on that day were  
11 unjustifiable.

12 And so we'll ask that you agree with that  
13 contention and separate Mr. Askew from service with  
14 the Chicago Police Department. Thank you.

15 **HEARING OFFICER JOHNSON:** Thanks.

16 Does the Respondent wish to make an  
17 opening?

18 **MR. FAHY:** Yes, please. Thank you. Good  
19 morning, Members of Board, Mr. Hearing Officer.

20 The incident that brings us here today  
21 occurred back in October of 2006, approximately five  
22 and a half years ago.

23 The witnesses to this incident, as the  
24 City has just outlined, are all family members.

Page 12

1 They all lived at 6408 South Marshfield. They lived  
2 there then. They still live there now.

3 The other witnesses are police personnel,  
4 one being my client, Officer Askew. The other being  
5 the other responding officer to this incident, a  
6 witness to it, Officer Pamela Sutton. And then  
7 after the incident occurred, a sergeant arrived on  
8 the scene also. And that was a sergeant by the name  
9 of Derrick Shinn.

10 My client is a highly experienced,  
11 dedicated police officer. He's been on this job for  
12 more than 20 years, a very experienced policeman, a  
13 very experienced patrolman.

14 He spent his entire career in two of the  
15 most challenging districts, one being the Seventh  
16 District, which is the Engelwood neighborhood, and  
17 the other one being the Fifth District, which is on  
18 the far South Side of the city. He has served this  
19 Department honorably for those 20-plus years.

20 What essentially happened here is Greg  
21 Larkins, the complaining witness in this matter, was  
22 at his home, and he was out of control, drunk,  
23 unruly, whatever it may be. He began fighting with  
24 his cousin, Norman Mitchem.



1 These are two young men that were in their  
2 early thirties at the time. Norman Mitchem is also  
3 known as Norman Perry, Junior.

4 And the fight, quite simply, was out of  
5 control. It could not be stopped at the home or out  
6 in front of the house, where it was occurring, and  
7 family members had to call the police.

8 Police Officer Pamela Sutton was the first  
9 one to arrive on the scene. She was not able to  
10 break up this fight by herself. She did tell them  
11 to stop. They didn't. It was shortly after that  
12 that Officer Askew arrived on the scene.

13 Now, he along with Officer Sutton  
14 initially were able to separate the two combatants.

15 After separating the two men, Greg Larkins  
16 would not stop, and his behavior continued to be out  
17 of control. He continued his ranting and raving and  
18 eventually went back after and started pummeling his  
19 cousin, Mr. Mitchem again.

20 At this point Officer Askew steps in  
21 again. He is once again telling Greg Larkins to  
22 stop, that he's under arrest. Larkins is refusing  
23 his commands and continuing to pummel his cousin.

24 At that point, Officer Askew does remove

1 happened on the scene by those family members at the  
2 time and no complaints about the actions of Officer  
3 Askew.

4 He interviewed them, and they did tell him  
5 that Officer Askew did use his asp to break up the  
6 fight, but never told them that he struck  
7 Mr. Larkins in the head.

8 The other thing that's important about the  
9 sergeant is Officer Askew wasn't in any way trying  
10 to conceal the force that he used.

11 He is an experienced police officer. He's  
12 trained on use of force, and he's very familiar with  
13 General Order 02-8, which governs the use of force  
14 by Department members, which the Board will have as  
15 a stipulated document.

16 The use of force with the Police  
17 Department is all based upon reasonableness, and  
18 basically it states that police officers are allowed  
19 to use the force that he reasonably believes  
20 necessary to defend himself or another from bodily  
21 injury while making an arrest. And part of that  
22 General Order is the use of force model.

23 Clearly, at this juncture, when the baton  
24 was used, Mr. Larkins was an assailant, and an

1 his baton and uses it to strike him on the body. He  
2 never struck him in the head.

3 These complainants and family members are  
4 saying that my client struck him in the back of the  
5 head with a metal baton at least two times. If that  
6 were the case, Mr. Larkins would not have been able  
7 to run from the scene.

8 Larkins was telling him that he was not  
9 going back to jail, and he breaks and he was able to  
10 get away from the scene into the house where the  
11 doors were locked.

12 Officer Askew remains on the scene. He's  
13 there with Officer Sutton. There's a lot of people  
14 out there.

15 Officer Sutton eventually tours the area  
16 because there's information he went out the back.  
17 They never find him.

18 Sergeant Shinn arrives on the scene after  
19 the incident occurs.

20 What's important about Sergeant Shinn is a  
21 couple of things. One is he takes the time to  
22 interview some of the family members on the scene  
23 that you will hear from today.

24 There were no complaints about what

1 assailant is defined as someone whose actions are  
2 aggressively offensive without weapons.

3 Someone who continued to punch and beat on  
4 his cousin is someone who is certainly being  
5 aggressively offensive, and under that circumstance  
6 and under the use of force model, a police officer  
7 is then able to use stunning blows and also his  
8 impact weapon.

9 Now, the impact weapon that's issued to  
10 police officers of the Department is the -- it's  
11 going to be called different things, but it's  
12 essentially -- I call it a baton.

13 I think the correct term is an "asp," but  
14 it's a retractable metal circular baton that  
15 extends. It's metal, and it's circular.

16 And he told the sergeant, when the  
17 sergeant arrived, about the use of force that he did  
18 use at the scene.

19 He documented his use of force in the  
20 General Offense Case Report that he generated.

21 More importantly, he told his sergeant --  
22 and you have to remember, this is going back five  
23 and a half years. The TRR General Order was issued  
24 sometime in 2002.



Page 17

1 Back in 2006, Officer Askew believed he  
2 had to do a TRR, and he told the sergeant that. The  
3 sergeant said, Well, you don't have anyone in  
4 custody. I don't think you have to do it because  
5 you don't have anyone arrested.

6 And the sergeant will tell you that he  
7 wasn't sure at the time and that he should have made  
8 sure that the TRR was done by Officer Askew. He  
9 signed off on Officer Askew's report later that  
10 shift. And he will simply say that -- take  
11 responsibility for the fact that the TRR wasn't  
12 done, because my client did believe one needed to be  
13 done. But the important thing is he wasn't trying  
14 to hide the use of force.

15 What's interesting about this case is  
16 Mr. Larkins makes good his escape from the arrest.  
17 And then it's over eight hours, or at least eight  
18 hours later at that same address there's a call for  
19 an ambulance and he's complaining about pain to his  
20 knee and in his shoulder and a cut on the back of  
21 his head.

22 He tells the ambulance driver that he was  
23 involved in a brawl, a fight, and that there was a  
24 beating, things along those lines.

Page 18

1 And at the hospital, he tells them it was  
2 the result of a policeman, or the police did it.

3 There weren't several lacerations to  
4 Mr. Larkins. He was treated and released for minor  
5 injuries. He had a cut, one cut, in the back of his  
6 head that required seven stitches.

7 Common sense tells us, and they're all  
8 going to say, at least from the reports that they've  
9 given, that my client struck him in the back of the  
10 head at least two times with the baton.

11 Well, a circular metal baton is a blunt  
12 instrument --

13 **MS. JACKSON:** Mr. Hearing Officer, I'm  
14 going to object. This is opening statements, not  
15 argument, so I'm objecting on that basis.

16 **HEARING OFFICER JOHNSON:** Overruled for  
17 right now.

18 **MR. FAHY:** Well, I guess what I'm going to  
19 say is these are minor injuries, and I believe when  
20 the evidence is established and admitted with regard  
21 to the medical reports, I think it's going to lead  
22 one to in a common sense way listen to the testimony  
23 and consider what these injuries were supposed to  
24 be, eight hours later these injuries that he had.

Page 19

1 They weren't caused by Officer Askew.

2 The injuries to his shoulder certainly  
3 weren't caused by Officer Askew, and I'll admit that  
4 the injuries to his knees, the swelling of a knee,  
5 he was in the middle of a brawl. He was fighting  
6 when the police arrived there.

7 My client did admit to the use of the  
8 baton, but he used it in a proper manner and in  
9 accordance with the General Orders. And the  
10 evidence will show that the force he used was  
11 reasonable. It was justified under the  
12 circumstances, and therefore he is not guilty of  
13 committing any battery, which is essentially the  
14 charge against him in this case, that he committed  
15 battery against Mr. Larkins.

16 And after all of the evidence, we'll ask  
17 that a finding of not guilty be entered. Thank you.

18 **HEARING OFFICER JOHNSON:** Thank you.

19 **MS. JACKSON:** At this time, Mr. Hearing  
20 Officer, I just want to make a matter of objection.  
21 I didn't want to interrupt counsel, and I  
22 anticipated your Honor telling me that it's opening  
23 statement, but I don't believe the evidence will  
24 show that Sergeant Sutton interviewed any of the

Page 20

1 witnesses, that he approached any of the witnesses  
2 to inquire of what happened.

3 I believe the evidence will show based on  
4 what is the -- I reviewed in the CR that his  
5 statement was based upon his questioning of the  
6 Respondent.

7 At this time, I just request that  
8 admission of what I've already tendered to all  
9 parties, your Honor, City's Exhibit No. 1, which is  
10 the statute at issue here, and City's Exhibit No. 2,  
11 the TRR, General Order 02-08-05, I request admission  
12 and judicial notice of those items.

13 **HEARING OFFICER JOHNSON:** You have no  
14 objection to that, right?

15 **MR. FAHY:** I do not.

16 **HEARING OFFICER JOHNSON:** So those are  
17 both received.

18 **MS. JACKSON:** Thank you.

19 At this time, I request admission of  
20 City's Exhibit No. 3, and I propose a stipulation,  
21 City's Exhibit 3 is the Chicago Fire Department  
22 two-page document ambulance report.

23 I propose that the parties stipulated that  
24 it was and is a business record kept in the ordinary

1 course of business for treatment of individuals who  
2 are being transported to the hospital, and in this  
3 case Mr. Larkins was transported to Holy Cross  
4 Hospital. I request admission on that basis, a  
5 stipulation to City's 3.

6 **HEARING OFFICER JOHNSON:** Right. We  
7 talked about this at the prehearing. You're going  
8 to stipulate to its admission, correct?

9 **MR. FAHY:** That's correct.

10 **HEARING OFFICER JOHNSON:** So 3 is  
11 received.

12 **MS. JACKSON:** And, finally, Mr. Hearing  
13 Officer, before I call my first witness, City's  
14 Exhibit No. 4, I would propose a stipulation of  
15 this, as well.

16 It is the Holy Cross Hospital medical  
17 records, and if I were to call a witness, Dana Kale,  
18 she is a records keeper. She would testify that  
19 these records are also kept in the ordinary course  
20 of business when individuals report to the hospital  
21 seeking treatment, and I request admission of City's  
22 4 pursuant to that stipulation.

23 **HEARING OFFICER JOHNSON:** We're  
24 stipulating to the admission of 4, correct?

1 Q And, Ms. Larkins, you live in the city of  
2 Chicago, right?

3 A Yes.

4 Q Where do you currently reside?

5 A **6408 South Marshfield Avenue, First Floor.**

6 Q And I want to direct your attention to  
7 October of 2006. Am I speaking loudly enough for  
8 you?

9 A Yes. I hear you.

10 Q October of 2006 you were still living at  
11 that location; is that correct?

12 A Yes.

13 Q And you said you live on the first floor?

14 A Yes, I do.

15 Q Who else in October of 2006, if anyone,  
16 resided with you?

17 A My son.

18 Q And what's his name?

19 A **Greg Larkins.**

20 Q And you are retired; is that correct?

21 A Yes.

22 Q And prior to your retirement, what type of  
23 work did you do?

24 A **I worked for the Board of Education. I**

1 **MR. FAHY:** Yes.

2 **HEARING OFFICER JOHNSON:** Four is  
3 received.

4 **MS. JACKSON:** And at this time,  
5 Mr. Hearing Officer, I call Ms. Alice Larkins to the  
6 stand.

7 **HEARING OFFICER JOHNSON:** Do you want to  
8 swear our witness.

9 (Witness sworn.)

10 ALICE LARKINS,  
11 called as a witness herein, having first been duly  
12 sworn, was examined and testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MS. JACKSON:**

15 Q Good morning.

16 A **Good morning.**

17 Q How are you?

18 A **Nervous.**

19 Q Well, if you could, introduce yourself to  
20 the Hearing Officer and tell us your name.

21 A **My name is Alice Larkins.**

22 Q And, Ms. Larkins, can you spell your last  
23 name for us?

24 A **L-a-r-k-i-n-s.**

1 **was a lunchroom manager.**

2 Q And you retired from service with the  
3 Board of Education; is that correct?

4 A Yes, I did.

5 Q Now, did you witness or observe any  
6 incident that occurred on that day in which the  
7 police were called to your home?

8 A Yes, I did, my nephew and my son.

9 Q And let me slow you down for a minute,  
10 Ms. Larkins.

11 Do you remember what time it was?

12 A **Oh, man. Shoot. I don't know what time**  
13 **it was.**

14 Q Do you remember if it was day or night?

15 A It was day.

16 Q Do you remember if it was early in the  
17 morning or in the afternoon?

18 A **It was close to the afternoon.**

19 Q And where were you when you saw what  
20 occurred between your son and your nephew?

21 A **I was upstairs with my sister.**

22 Q At some point did you leave from the  
23 upstairs?

24 A Yes, I did.



Page 25

1 Q And your sister lives upstairs. She's in  
2 the second unit; is that right?  
3 A Yes.  
4 Q Who else lives up there with her?  
5 A Her husband.  
6 Q What's his name?  
7 A Norman Perry, Senior.  
8 Q Who else lives there?  
9 A Her son, Norman Perry, Junior.  
10 Q And you were getting ready to tell us what  
11 you saw occur between Greg and Norman, Junior; is  
12 that right?  
13 A Yes. They were fighting a little bit when  
14 I left.  
15 Q How did you come to know they were  
16 fighting a little bit?  
17 A I seen it out the window.  
18 Q Where were you when you saw it?  
19 A Looking out the window.  
20 Q From the second floor?  
21 A Yes.  
22 Q What did you see?  
23 A They were just fighting.  
24 Q Was anybody else out there at that point?

Page 26

1 A At that point, no. Then I came  
2 downstairs.  
3 Q Tell the Hearing Officer what you did  
4 next.  
5 A I didn't do nothing.  
6 Q When you came outside and you went  
7 downstairs.  
8 A I didn't come outside until the policeman  
9 came.  
10 Q Let's back up quickly. When you looked  
11 outside, what made you look outside?  
12 A Because they were fighting.  
13 Q How do you know?  
14 A Because I looked outside. They were  
15 fighting then.  
16 Q What did you do?  
17 A I didn't do nothing. I just came  
18 downstairs to my house.  
19 Q When you came downstairs, where did you  
20 go?  
21 A In my house.  
22 Q What happened after that?  
23 A That's when the police came.  
24 Q Do you know who called the police?

Page 27

1 A My brother-in-law.  
2 Q Is that Mr. Norman Perry, Senior?  
3 A Yes.  
4 Q And can you describe the officer that  
5 arrived, was it a female or a male?  
6 A It was a male and a female.  
7 Q And do you know if they came together?  
8 A I'm not sure.  
9 Q Tell me what happened when they got there,  
10 what occurred?  
11 A I went out. Well, what happened?  
12 This is all I can say. They had stopped  
13 fighting. The police asked them to stop fighting, I  
14 don't know which one, and they stopped.  
15 Q Where were you when you got outside?  
16 Where did you end up?  
17 A I ended up on the porch -- not on the  
18 porch. I was on the landing.  
19 Q Describe that area for us.  
20 A Okay. (Indicating) This is the house.  
21 These are the stairs. And this is the fence. And I  
22 was standing against the fence.  
23 Q So there's a fence before you approach the  
24 stairs; is that accurate?

Page 28

1 A Yes.  
2 Q And you were standing near the fence?  
3 A Yes. And the fence was pointing north.  
4 Q And how far away from the porch were you  
5 standing?  
6 A Not that far. I can't say. I'm not good  
7 on inches, measurements. It wasn't that far that I  
8 couldn't see.  
9 Q And where was the police officer?  
10 You said there were two. Where was the  
11 female police officer?  
12 A She was in the street by the car.  
13 Q And can you describe -- you said there was  
14 a male police officer, I believe; is that correct?  
15 A That was a woman, honey.  
16 Q Did you also at any point see a male  
17 police officer?  
18 A Yes. Yes, there was a male.  
19 Q And what did you observe with the male  
20 officer? What did you see, if anything, he do?  
21 A Well, that's got me kind of confused.  
22 Q Let me try to ask you a better question.  
23 So you said you came outside, and you said  
24 you weren't on the porch, but you were on the

1 landing?

2 A Yes.

3 Q I want to take you back to the landing.

4 I need you to tell the Hearing Officer  
5 what did you see Greg do, and what did you see any  
6 of the two officers do?

7 A Greg came up the stairs and stood on the  
8 porch, and that's what I seen, and just running off  
9 at the mouth.

10 Q Do you remember what he was saying? What  
11 did you hear Greg saying?

12 A I don't know. He was just running off at  
13 the mouth. And then the next thing I know, the  
14 officer come up on the porch. And he was just  
15 standing there, just running off the mouth.

16 Q At this point, when Greg is running off at  
17 the mouth, where is Norman, your nephew?

18 A I don't know where he was.

19 Q Was he near the porch or the landing?

20 A I can't say. I'm standing, looking up at  
21 the porch, this officer coming up, and when the  
22 officer came up, I guess I don't know what they was  
23 saying. I just figured that anything is coming,  
24 like maybe he just wanted to talk to him, whatever.

1 Q And what did you see when he came up to  
2 the porch, that officer?

3 A It's been some time. He said something to  
4 Greg. I said, Wow. Then the next time I know he  
5 just pulled out this long stick and hit him on his  
6 leg, shoulder. And I said -- I was so stunned  
7 because I didn't expect all that. He hit him on his  
8 head. Somehow or another it just stunned me. I was  
9 stunned. For whatever he said or whatever he done,  
10 I didn't think that was necessary to my opinion.

11 Q And what happened after that?

12 A So after that -- my front door was locked.  
13 My sister's door was open, and Greg opened the door  
14 and ran up the stairs.

15 Q At any time before or after the officer  
16 hit him with the stick, was Greg fighting Norman at  
17 that point?

18 A No.

19 Q When the officer arrived, was Greg and  
20 Norman, were they still fighting then?

21 A They were fighting then, and he told them  
22 to stop, and they did.

23 Q And did the officer have to pull -- the  
24 one that hit him with the baton, did he have to pull

1 Greg and Norman apart?

2 A I can't really say. I will be honest. I  
3 can't say. I know they stopped. I don't know who  
4 pulled who. I don't know.

5 Q Now, you said that Greg ran into your  
6 sister's apartment; is that right?

7 A Upstairs.

8 Q What did you observe -- after that did you  
9 see -- strike that.

10 After Greg ran into the house, did you see  
11 where the officer went?

12 A No, I didn't.

13 Q What did you do next?

14 A I left in front of the house and went  
15 through the parking lot, through the back gate of  
16 the parking lot, and went through the back of my  
17 yard. And there was my son coming down the stairs,  
18 blood all over his face, and he just left.

19 Q He walked out of the home?

20 A He walked out and came down the back of  
21 the stairs on my porch. He had a tie on, and  
22 everything -- he was bleeding and went out the back  
23 gate.

24 Q Now, at some point did he come back to the

1 home?

2 A Yes, he did. That was later.

3 Q Do you remember about what time?

4 A I don't know what time. It was dark.

5 Q What happened when he returned?

6 A He told me that his head and knees was  
7 hurting, and shoulders.

8 Q Then what happened?

9 A He went to the hospital.

10 Q How did he get there, do you know?

11 A My nephew and his girlfriend drove my car  
12 to the hospital.

13 Q Do you know how Greg got there?

14 A What?

15 Q Do you know how Greg, your son, got there?

16 A My nephew and his girlfriend drove my car  
17 and took him to the hospital.

18 Q At any point did you take pictures of your  
19 son?

20 A Yes, I did.

21 Q When did you take those pictures?

22 A I took the pictures the day when he came  
23 back from the hospital, and I sent those pictures  
24 down to Ms. Webb.



1 Q What made you take the pictures?  
2 A Because I think it was right for me to do  
3 that.  
4 Q What made you want to take them?  
5 A I just take them.  
6 Q And what were you intending to do with  
7 them once you took them?  
8 A I was just going to keep them.  
9 HEARING OFFICER JOHNSON: I didn't get  
10 when she took the pictures, after he got back from  
11 the hospital?  
12 THE WITNESS: Yes, after he came back from  
13 the hospital.  
14 BY MS. JACKSON:  
15 Q Was this the same day of the incident you  
16 are telling us about?  
17 A Yes, it is.  
18 Q Do you remember what kind of camera you  
19 used, Ms. Larkins?  
20 A I got a Nikon flash camera.  
21 Q That's your personal camera? That's your  
22 own camera?  
23 A I've had it for years.  
24 Q So you are familiar with how to use it?

1 A This one?  
2 Q Yes, ma'am.  
3 MR. FAHY: I would object to the first  
4 page of it, which is a letter written, or note  
5 written apparently to Investigator Webb from  
6 Ms. Larkins.  
7 HEARING OFFICER JOHNSON: Yes. She's here  
8 to testify live, so why do you need the first one?  
9 MS. JACKSON: I have no problem taking it  
10 out.  
11 BY MS. JACKSON:  
12 Q Now, I want you to please leaf through  
13 these pages. There is a total of seven pages.  
14 Do these pictures look familiar to you,  
15 Ms. Larkins?  
16 A Yes.  
17 Q Are these the pictures that you took of  
18 your son?  
19 A Yes.  
20 Q Are these accurate copies of those  
21 pictures?  
22 A She might have sent them back, and I can't  
23 remember where I put them. I don't know.  
24 HEARING OFFICER JOHNSON: She's just

1 A Yes.  
2 Q You developed the pictures?  
3 A I take them to the shop. They develop  
4 them. It's not one of them new ones they got. I  
5 got one, but I had this camera for years.  
6 Q I'm going to show you some copies. Let me  
7 ask you one more question first.  
8 You said you sent them to Ms. Webb; is  
9 that right?  
10 A Yes, when I went down there. She asked me  
11 to send them, and I did.  
12 Q Do you know is this the investigator  
13 you're talking about?  
14 A Yes.  
15 Q I'm going to show you what I've marked for  
16 identification as City's Exhibit No. 5.  
17 MS. JACKSON: I'm handing it to  
18 Respondent's counsel, Mr. Hearing Officer and  
19 Ms. Larkins.  
20 BY MS. JACKSON:  
21 Q This first page, Ms. Larkins, are you  
22 familiar with this?  
23 I'm going to draw your attention to that  
24 first page you are holding there.

1 asking are these accurate copies of the pictures you  
2 took?  
3 THE WITNESS: Yes, these are.  
4 MS. JACKSON: Mr. Hearing Officer, I  
5 request admission of City's Exhibit 5.  
6 HEARING OFFICER JOHNSON: Any objection to  
7 5?  
8 MR. FAHY: No objection.  
9 HEARING OFFICER JOHNSON: 5 is received.  
10 BY MS. JACKSON:  
11 Q I just want to ask you a few more  
12 questions, Ms. Larkins.  
13 If you recall, when you were outside, do  
14 you know where your brother-in-law was standing or  
15 sitting, Norman Perry, Senior?  
16 HEARING OFFICER JOHNSON: Do you mean when  
17 she was against the fence?  
18 BY MS. JACKSON:  
19 Q When you went outside next to the fence,  
20 do you recall where Norman Perry, Senior was?  
21 A They were both on the stairs -- not on the  
22 stairs, on the porch.  
23 Q You say "both." Who do you mean?  
24 A Him and his wife, my sister.

Page 37

Page 39

1 Q So would you agree with this statement?  
2 Norman Perry, Senior; his wife, your  
3 sister, Etta; and Greg, your son; all of them were  
4 on the porch?  
5 **MR. FAHY:** Objection to the leading nature  
6 of the questions.  
7 **HEARING OFFICER JOHNSON:** I would sustain  
8 that.  
9 **MS. JACKSON:** I'll rephrase.  
10 **HEARING OFFICER JOHNSON:** Why don't you  
11 just ask her who was on the porch.  
12 **BY MS. JACKSON:**  
13 Q Mr. Norman Perry was on the porch, is that  
14 what you were saying?  
15 A Yes.  
16 Q And his wife was on the porch?  
17 A Yes.  
18 Q And your son was on the porch?  
19 A Yes.  
20 **MS. JACKSON:** I have nothing further for  
21 you. Thank you.  
22 **HEARING OFFICER JOHNSON:** Cross?  
23  
24

1 Q Is he also known as Norman Mitchem?  
2 A I'm sorry. Yes, he is. Yes, it is. His  
3 name is Norman Mitchem Perry.  
4 Q Does your son still live at that location?  
5 A My son?  
6 Q Yes, Greg.  
7 A Yes, he does.  
8 Q Do the Perrys still live in the second  
9 floor?  
10 A Yes.  
11 Q Now, when you first looked out the window,  
12 what drew your attention to look out the window?  
13 A Well, I'm not sure.  
14 Q Was there a commotion outside?  
15 A There was a commotion, yes.  
16 Q You could hear some yelling back and forth  
17 and some commotion?  
18 A Yes.  
19 Q Before you heard that commotion, did you  
20 see Greg and your nephew, Norman, inside of the  
21 building?  
22 A No.  
23 Q When was the last time you had seen Greg  
24 and Norman?

Page 38

Page 40

1 **CROSS-EXAMINATION**  
2 **BY MR. FAHY:**  
3 Q Ma'am, you still live at 64th and  
4 Marshfield, correct, the same home?  
5 A Yes, I do.  
6 Q And the first floor, it was you and your  
7 son Greg who lived there at the time?  
8 A Yes, my son and my brother.  
9 Q And that's the first floor apartment?  
10 A Yes, it is.  
11 Q And the second floor, back in  
12 October 2006, your sister lived on the second floor?  
13 A No.  
14 Q I'm sorry. Was it your brother?  
15 Let me just ask you this. Who lived on  
16 the second floor?  
17 A My sister, her husband, and her son.  
18 Q So it's your sister, your husband and your  
19 son?  
20 A Her husband.  
21 Q Correct.  
22 A My sister and her husband and her son.  
23 Q I understand. What is her son's name?  
24 A Norman Perry, Junior.

1 **MS. JACKSON:** Objection, relevance.  
2 **HEARING OFFICER JOHNSON:** No, overruled.  
3 **BY MR. FAHY:**  
4 Q Do you understand my question?  
5 A No. Say it again.  
6 Q When you looked out the window, you saw  
7 Norman and Greg, correct?  
8 A At that time, yes.  
9 Q Prior to looking out the window, when was  
10 the last time you had seen those two?  
11 A When I left.  
12 Q But before you looked out the window, had  
13 you seen them earlier that day?  
14 A I seen my boy early that day.  
15 Q How much time passed from the time you had  
16 seen your boy to the time you looked out the window?  
17 A I can't say.  
18 Q Did you observe any commotion between  
19 Norman and Greg before they went outside?  
20 A No.  
21 Q Do you know what the commotion was about?  
22 **MS. JACKSON:** Objection, relevance.  
23 **HEARING OFFICER JOHNSON:** Overruled.  
24 **THE WITNESS:** No.



Page 41

Page 43

1 BY MR. FAHY:

2 Q Do you know why they were fighting?

3 A No.

4 Q They were actually fighting, correct?

5 A Yes. They get in disagreements. They  
6 would wrestle and stuff like that.

7 Q Punching each other?

8 A Yes.

9 Q Kicking each other?

10 A No. I didn't see all of that.

11 Q Just punching and wrestling?

12 A Yes.

13 Q When you looked out the window, did you  
14 see your son with a crowbar?

15 A No.

16 Q Did you see him with a tire iron?

17 A No.

18 Q Did you call the police when you saw the  
19 commotion?

20 A I didn't call the police.

21 Q So when you saw the fight, you simply just  
22 went downstairs into your home?

23 A Definitely.

24 Q When you went downstairs, did you look

1 They were on the porch, and I was standing on the --

2 Q Did they come outside after you came out?

3 A Yes.

4 Q Was there anyone else besides your family  
5 members outside?

6 A There probably was neighbors and stuff. I  
7 didn't pay no attention to that. I was paying  
8 attention to what's going on in front of me.

9 Q When you saw them fighting, did you see  
10 other people outside?

11 A There was other people out there, yes.

12 Q And it was the police that had to break up  
13 the fight, correct?

14 A Yes, they broke it up. But they just told  
15 them to stop, and they stopped.

16 Q Were you there when that occurred?

17 A Yes.

18 Q Or had the fight already been broken up?

19 A I think the fight was broken up when I got  
20 there.

21 Q What was your son's condition at that  
22 time, do you remember?

23 A I don't know. He might have been a little  
24 uptight. You know, they get uptight about certain

Page 42

Page 44

1 back outside?

2 A I went out.

3 Q When you went out, when you left the  
4 window from the second floor apartment, did you go  
5 straight down the stairs and outside?

6 A No, I went down from -- yes. After that,  
7 I don't know. All I did, I went outside. And when  
8 I went outside -- no, before I went outside, sir,  
9 the policeman had came, and he was telling them to  
10 stop, and they did. Then I went outside.

11 Q So the fight had already stopped, and the  
12 police were already there by the time you came  
13 outside?

14 A Yes.

15 Q Now, who called the police?

16 A My brother-in-law.

17 Q Was he in the apartment that you were in?

18 A Yes, he was.

19 Q Did your sister also call the police?

20 A I don't know about all that.

21 Q Was there anyone else outside when you  
22 went outside?

23 A Yes. When I went outside, my  
24 brother-in-law and my sister came down on the porch.

1 things.

2 Q Did he appear to be upset?

3 A He might have been a little upset.

4 Q Was he drunk?

5 A No.

6 Q Was he using any drugs that day?

7 A No.

8 Q You mentioned that he was running his  
9 mouth. What was he saying?

10 A I don't know what all he was saying. At  
11 one time, I just told him to shut up. I guess he  
12 decided that he was going to go run off at the  
13 mouth. I don't know what he was saying. I can't  
14 say what he was saying.

15 Q Was he cursing at you?

16 A No.

17 Q Was he swearing at others?

18 A No. He was just running off his mouth.

19 Q Do you remember him saying he's not going  
20 back to jail?

21 A I can't say that.

22 Q Pardon me?

23 A I can't say that.

24 Q But you do remember two police officers



1 being there at the time?

2 A Yes. I can remember that, because when  
3 the other policeman came up on the porch, and I  
4 looked back, I could see the young lady standing by  
5 the car. She was a young lady, a police lady.

6 And all I know this policeman come up on  
7 the porch, and I don't know the circumstances. I  
8 was just shocked to see what happened. And I said,  
9 Wow.

10 Q So you're saying you don't know the  
11 circumstances that led to him using the baton?

12 A No.

13 Q Is it fair to say whatever happened  
14 happened pretty quickly?

15 A It did.

16 Q So you are not sure what happened to cause  
17 the police officer to use the baton?

18 MS. JACKSON: Objection. It calls for  
19 speculation.

20 HEARING OFFICER JOHNSON: Overruled.  
21 BY MR. FAHY:

22 Q Is that fair to say?

23 A Yes.

24 Q When the police officer used the baton, do

1 parking lot, went through the parking lot, the  
2 church parking lot, all the way to the alley, come  
3 through the alley, and came through the back of my  
4 apartment.

5 Q Who was with you when you went there?

6 A Nobody.

7 Q You were by yourself?

8 A Yes.

9 Q And at that point, you saw your son?

10 A I saw him when he came out of from  
11 upstairs.

12 Q And you said that you noticed some blood?

13 A Yes.

14 Q And that was on his face?

15 A It was on the head.

16 Q And your son, did he run from there?

17 A Yes. He went on out the back gate. I  
18 don't know if he ran or walked. He went out the  
19 back gate.

20 Q But he left the area, correct?

21 A Yes, he did.

22 Q Where did you go then?

23 A I went in the house.

24 Q Do you remember, did you look back out the

1 you remember him telling your son that he was under  
2 arrest?

3 A I didn't hear that.

4 Q Do you remember him telling your son to  
5 stop fighting?

6 A But he wasn't fighting. He was just on  
7 the porch. He was standing on foot.

8 (Indicating) He didn't do nothing but had  
9 his arm down like this. I seen that.

10 Q Did your son fall after he was struck with  
11 the baton?

12 A No, he didn't.

13 Q And he ran away, and he was able to get  
14 into the house? Did he run into the house?

15 A Wouldn't you run if somebody was hitting  
16 you? He was standing there on the porch saying, I  
17 ain't done nothing.

18 Q Ma'am, my question to you was after the --

19 A I'm telling you he ran to my sister's,  
20 upstairs. That's where he ran.

21 Q And is it at that point that you went --  
22 you also left the porch and went out to the back of  
23 your house?

24 A I went down the stairs, walked to the

1 front of your house?

2 A I didn't.

3 Q Did you come back outside?

4 A No, I didn't.

5 Q Did you see the police still outside?

6 A No, I didn't.

7 Q Did you see any other police officers  
8 arrive on the scene?

9 A Yes. There was a -- I can't say. If it  
10 was before or after, I can't say.

11 Q But at some point you do remember other  
12 police besides the male and female police officers?

13 A I don't know.

14 Q Let me ask you this. Do you remember an  
15 officer with a white shirt, a sergeant?

16 A Yes. Yes, I do.

17 Q And did you speak to the sergeant?

18 A No.

19 Q Did you see your sister and her husband  
20 speaking to the sergeant?

21 A He didn't even come to us.

22 Q Were you in the house when the sergeant  
23 came?

24 A No. I think I was right there. See, it's

the come my of

Page 49

Page 51

1 kind of confusing because it's been some time now.  
2 I was there, and he didn't come nowhere on  
3 the porch at all. He was out there on the sidewalk  
4 talking to them, to one of them. I don't know who  
5 it was.

6 Q Are you saying the officer with the white  
7 shirt was there when the incident occurred or was it  
8 after?

9 A It was after.

10 Q My question to you is were you inside your  
11 home when you saw the sergeant?

12 A No. I was outside.

13 Q And when you were outside when the  
14 sergeant was on the scene, did you speak to the  
15 sergeant?

16 A I did not speak to the sergeant at all.

17 Q Did you see your sister and her husband  
18 speaking to the sergeant?

19 A I can't speak for them, because I don't  
20 know.

21 Q Did you see them near the sergeant?

22 A No.

23 Q Were they outside at the time the sergeant  
24 was there?

1 A A different nephew.

2 Q And who is that?

3 A That is Etta's other son.

4 Q That would be your nephew, right?

5 A That's my nephew.

6 Q And what's his name?

7 A Steven Mitchem.

8 Q So as you sit here today, you don't recall  
9 calling an ambulance and an ambulance arriving at  
10 your home sometime after 8:00 p.m. that evening?

11 A I ain't going to tell you no more, and I  
12 ain't going to sit here and lie.

13 My boy came in and said, Mama, I'm  
14 hurting. And I said, Well, ask Steve to take you to  
15 Holy Cross, and that's where he went.

16 Q Did Greg tell you where he had been for  
17 those hours, from the time that he left the house  
18 until the time he returned later that night?

19 MS. JACKSON: Objection, relevance.

20 MR. HEARING OFFICER: Overruled.

21 Do you remember his question?

22 THE WITNESS: He didn't tell me where he  
23 went. Like most people, they got friends and  
24 things, so I don't know.

Page 50

Page 52

1 A I guess they were. I don't know. To be  
2 honest, I don't know.

3 Q It's been a long time, right?

4 A Yes, it has.

5 Q Is it fair to say your memory of the event  
6 has kind of faded with the passage of time?

7 A Yes, it has, and I tried. The idea of the  
8 whole thing for me was unnecessary. That's my  
9 opinion.

10 Q And it wasn't until several hours later  
11 that your son came back to your home, correct?

12 A Yes.

13 Q And is it at that time that he complained  
14 about having a headache or dizziness?

15 A He told me he was hurting.

16 Q Did you call an ambulance at that time?

17 A I didn't call no ambulance. He told me he  
18 was hurting. I had a nephew and his girlfriend put  
19 him in my car and take him to Holy Angels, and  
20 that's a fact.

21 Q Let me ask you this, ma'am. When you are  
22 saying your nephew, are you referring to Norman?

23 A No.

24 Q That's a different nephew?

1 BY MR. FAHY:

2 Q So as far as you know, he was just with  
3 his friends?

4 A Yes.

5 Q Ma'am, were there any other fights near  
6 your home on that particular day after this one?

7 MS. JACKSON: Objection, relevance.

8 MR. HEARING OFFICER: Well, overruled for  
9 now.

10 BY MR. FAHY:

11 Q Do you recall any other fights that  
12 occurred at your house after this incident was over?

13 A No.

14 Q On that particular day?

15 A No.

16 Q Do you recall the police coming back to  
17 your house later that day?

18 A No.

19 MR. FAHY: No further questions.

20 MS. JACKSON: I just have a few questions,  
21 Ms. Larkins.

22 REDIRECT EXAMINATION

23 BY MS. JACKSON:

24 Q I want to draw your attention to when you



1 were standing on the landing on that day.  
2 Were you standing on the landing prior to  
3 before the police officer came on the porch?

4 A Yes.

5 Q So you saw the police officer walk up to  
6 the porch where your son was?

7 A Yes.

8 Q Now, you said when you were asked  
9 questions by the other attorney that you didn't know  
10 the circumstances that caused the police officer to  
11 hit your son with the baton --

12 A Yes.

13 Q -- did you hear a conversation between  
14 your son and the police officer?

15 A All I know he told him, I ain't done  
16 nothing. That's all I heard my son telling him, I  
17 ain't done nothing. I'm just standing here.

18 Q When your son said that to the police  
19 officer, was he screaming, yelling?

20 A No. He was just saying, I ain't done  
21 nothing, Officer. Both hands went down. Other than  
22 that, that's all I know.

23 MS. JACKSON: Nothing further.

24 MR. HEARING OFFICER: Any recross?

1 RECROSS-EXAMINATION

2 BY MR. FAHY:

3 Q The officer walked up and approached your  
4 son, is that what you're testifying to?

5 A Yes.

6 Q So they were facing each other?

7 A Facing each other.

8 Q And you don't recall exactly what the  
9 conversation was?

10 A If it was, I can't really know what he  
11 said, because I wasn't expecting him to come up  
12 there. They were just standing there. They was  
13 running off at the mouth. I just told him to shut  
14 up. You know how people are, they be running their  
15 mouth. I said, Shut up. That was it. Maybe he  
16 took it the wrong way, I don't know, whoever the  
17 police was. I don't know. I know that's what he  
18 come up on the stair for.

19 Q And you're saying at that point the  
20 officer used the baton, when he's on the porch?

21 A I don't know what he said. To be honest  
22 with you, I don't know. I was shocked.

23 I was really shocked to the point where he  
24 took whatever you called it and hit him on the knee,

1 and on the shoulder and on the head. I thought,  
2 Wow. I could see if he was fighting him. He wasn't  
3 fighting him. He didn't do nothing. Even a few  
4 words wouldn't have made nobody do that. I said,  
5 Wow.

6 Q Did Greg ever go down to the ground when  
7 he was hit with the baton?

8 A No.

9 Q What was his reaction when he was hit with  
10 the baton?

11 A He just stood there.

12 Q And they were still face to face?

13 A Yes.

14 Q Did he stand there when he got hit the  
15 second time?

16 A Stood there.

17 Q They were still face to face?

18 A Yes.

19 Q How many times are you saying he was  
20 struck with the baton while he was standing face to  
21 face?

22 A He was hit in his knee, his shoulder, and  
23 hit on his head. I could see that.

24 Q And they still remained face to face

1 during this time?

2 A Face to face.

3 Q And then you're saying Greg simply ran  
4 into the house?

5 A When he moved back, that's when he opened  
6 the door and went up the stairs. That's what I  
7 seen. I wasn't expecting that.

8 MR. FAHY: No further questions.

9 MR. HEARING OFFICER: Thank you for coming  
10 down.

11 Swear the witness.

12 (Witness sworn.)

13 ETTA LARKINS,

14 called as a witness herein, having first been duly  
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. JACKSON:

18 Q Good morning.

19 A Good morning.

20 Q How are you?

21 A I'm here.

22 Q I appreciate that.

23 Can you please introduce yourself to the

24 Hearing Officer.

Page 57

1 A My name is Etta Larkins. I use Larkins  
2 most of the time.  
3 Q And you're married to someone with the  
4 last name of Perry; is that right?  
5 A Norman Perry, my husband.  
6 Q And where do you and Mr. Perry live?  
7 A 6408 South Marshfield, Second Floor.  
8 Q And your sister lives in that building; is  
9 that correct?  
10 A Yes.  
11 Q Where does she live?  
12 A She lives on the first floor.  
13 Q Who else lives with you on the second  
14 floor, if anyone?  
15 A My son, Norman Mitchem. My daughter was  
16 there, but she's in the hospital right now.  
17 Q Say that again.  
18 A My grandson, Kamarian McClean.  
19 Q Do you prefer if I call you Ms. Etta Perry  
20 or Ms. Larkins? Which do you prefer?  
21 A It don't make no difference.  
22 Q I want to draw your attention, Ms. Perry,  
23 to October of 2006.  
24 You were in that same location; is that

Page 58

1 correct? You lived at the same place?  
2 A Yes.  
3 Q And do you recall police officers being  
4 called to your home on that day?  
5 A Yes.  
6 Q And do you know why they were called?  
7 A Because Norman and Greg had got scuffling  
8 out there in front.  
9 Q If you could do us a favor, speak a little  
10 louder. He has to type every word you say.  
11 A They were scuffling out in the front.  
12 Q Greg is your nephew, right?  
13 A Yes, he's my nephew.  
14 Q Do you remember about what time of the day  
15 this was?  
16 A About 1:00, 2:00 o'clock. I'm not sure  
17 about the time.  
18 Q That's the afternoon, right?  
19 A In the afternoon.  
20 Q Now, how did you know that they were  
21 scuffling outside?  
22 A I was sitting in the window.  
23 Q On the second floor?  
24 A Yes, on the second floor. I was looking

Page 59

1 out.  
2 Q And what did you do after you saw them  
3 scuffling?  
4 A I told my husband that Greg and Norman was  
5 out there fighting.  
6 Q And what happened after that, after you  
7 told your husband?  
8 A Well, he called the police.  
9 Q Then what happened?  
10 A The police came.  
11 Q And where were you when the police  
12 arrived?  
13 A I was still upstairs, but then I came  
14 downstairs to see what was going on.  
15 Q When you came downstairs, where did you  
16 go?  
17 A I was standing in the doorway on the  
18 second floor side. That was on the left side of the  
19 porch.  
20 Q Were any of your other family members  
21 outside?  
22 A My sister was out there. Alice was out  
23 there. My husband, he came down. And Norman and  
24 Greg was there.

Page 60

1 Q Can you describe where everybody was when  
2 you came downstairs and were standing on the porch?  
3 A I was in the doorway. Norman was standing  
4 at the steps. Alice was outside the gate.  
5 Do you want to know before they were  
6 fighting or after they were fighting?  
7 Q Let's talk about before they were  
8 fighting. You came downstairs before?  
9 A This was after they were fighting.  
10 Q Were you ever outside during Norman and  
11 Greg's fight?  
12 A Just for a few minutes.  
13 Q So were you outside when they were  
14 fighting before the police arrived?  
15 A I'm not even sure.  
16 Q When you came outside, and you were on the  
17 porch, did you get outside before the police came to  
18 your home?  
19 A No. They were already there, I think.  
20 They were already there.  
21 Q The police were already there by the time  
22 you came out?  
23 A Yes, by the time I got downstairs.  
24 Q Did you at any point after you came



1 outside see Greg and Norman continue to fight?  
2 A Yes.  
3 Q Did someone have to pull them apart?  
4 A When the police came there, the lady  
5 policeman told them to break it up, break it up,  
6 break it up.  
7 Q And did they respond to her?  
8 A They did break it up.  
9 Q Were you outside when a male police  
10 officer arrived?  
11 A I was still standing in the doorway.  
12 Q When he arrived, were they fighting?  
13 A Norman was sitting on the stairs. Greg  
14 was in the doorway on the first floor. He was in  
15 the doorway, but they weren't fighting at that time.  
16 It's kind of hard to remember everything that went  
17 on that day.  
18 Q I'm just asking you to do the best you  
19 can.  
20 A Okay.  
21 Q So you said Greg was at the porch? Is  
22 that what you said?  
23 A He was standing in the front door on the  
24 first floor. I was in the doorway on the second

1 floor. And Norman was sitting on step down there  
2 just before you get out to the sidewalk. He was on  
3 the top step.  
4 Q Where was the female police officer?  
5 A She was outside the gate.  
6 Q Was she near her squad car near the  
7 street?  
8 A She was talking with Alice, I think, if I  
9 remember correctly.  
10 Q And where was the male police officer?  
11 A He came up in the yard. I have a banister  
12 there, and he was leaning there. And there was  
13 another policeman there, but I can't remember where  
14 he was standing. About.  
15 He was at the foot of the stairs coming up  
16 to -- I have about five steps there.  
17 Q Are you talking about the male police  
18 officer came up the steps? Is that what you're  
19 saying?  
20 A Yes. He was standing there in the yard.  
21 Q Before he came into the yard, were Norman  
22 and Greg still fighting?  
23 A No. They had stopped.  
24 Q And what happened when he came up to the

1 porch?  
2 A Well --  
3 Q Let me ask you a different question.  
4 Did you hear any conversation between the  
5 police officer and Greg?  
6 A Yes.  
7 Q Can you tell the Hearing Officer what you  
8 heard?  
9 MR. FAHY: Objection, foundation. At what  
10 point?  
11 MR. HEARING OFFICER: This is after the  
12 male police officer is inside the yard at the bottom  
13 of the steps and Greg is in the doorway.  
14 So then the question is did you hear them  
15 talk to each other?  
16 THE WITNESS: Greg kept talking and  
17 talking. He wasn't saying too much. The officer  
18 told him, I could arrest you now. Greg said, What  
19 for? I ain't did nothing.  
20 BY MS. JACKSON:  
21 Q Did you hear anything after that?  
22 A He told Greg -- wait a minute. Let me get  
23 it in the right sequence.  
24 He said, I could arrest you right now. He

1 said, For what? I ain't did nothing.  
2 He told Greg to get out, get out. So Greg  
3 didn't get out. He stood there. And he was still  
4 saying he ain't done nothing. So he told Greg, When  
5 you in my household, when you are told to do  
6 something, you do it. Then he came up the stairs.  
7 Q Then what happened?  
8 A He hit Greg on the leg, on the right leg;  
9 the shoulder. Then he hit him in the back of his  
10 head.  
11 Q What did you see after that?  
12 A Blood. After that, Greg said, He bust my  
13 shit. And he ran in my door and went upstairs,  
14 because he couldn't even get in the first floor  
15 because the door was locked. It's all one big happy  
16 family there, whatever.  
17 Q You said you saw blood; is that correct?  
18 A Yes.  
19 Q Where did you see it?  
20 A On the back of his neck.  
21 Q What did the officer do after he -- let me  
22 ask you this.  
23 What did he hit him with?  
24 A With that black stick.

1 Q What did he do after he hit him with the  
2 stick?  
3 A I don't know. I went upstairs with Greg.  
4 Q What happened once you went upstairs with  
5 Greg?  
6 A Greg, he went out the back door, went  
7 downstairs. And then he went through his mom's  
8 house and was standing there in the window.  
9 Q What happened next?  
10 A I went upstairs and stayed up there.  
11 Q Did any other officers come to the scene?  
12 A There was another officer come there, but  
13 I couldn't remember what they looked like or  
14 anything. One of them had a white shirt on. That's  
15 all I know.  
16 Q Did he ask to speak with you?  
17 A No.  
18 Q How did you know one had a white shirt?  
19 A I seen him out the window. Alice was  
20 still downstairs. She was still downstairs on the  
21 front.  
22 Q Did you see the officer with the white  
23 shirt talk to Alice?  
24 A I don't remember.

1 Q After Greg ran into the house, did you see  
2 the officer that hit him with the black stick, did  
3 he run after Greg?  
4 A No.  
5 Q Did you see any other officer run after  
6 Greg?  
7 A No.  
8 Q Did he talk to you or did you observe him  
9 -- strike that.  
10 Did he talk to you, the officer who hit  
11 him with the black stick?  
12 A No.  
13 Q Did you observe him talk to anybody else?  
14 A Not that I know of.  
15 Q And you said you saw blood on Greg's head;  
16 is that correct?  
17 A Back of his neck.  
18 Q Did you see blood anywhere else?  
19 A On my door, on the outside of the door,  
20 the inside of the door, and the door upstairs.  
21 MS. JACKSON: That's all the questions I  
22 have for you, Ms. Perry. Thank you.  
23 MR. HEARING OFFICER: Cross-examination  
24 for Ms. Perry?

1 CROSS-EXAMINATION  
2 BY MR. FAHY:  
3 Q Ma'am, is it your testimony that after the  
4 incident Greg ran up into your apartment?  
5 A Yes.  
6 Q And then he ran down to his mother's  
7 apartment where he lived, correct?  
8 A Yes.  
9 Q He was looking out the front window?  
10 A Yes.  
11 Q He stayed looking out the front window?  
12 A Well, I think he came back out. I'm not  
13 sure. It happened so fast. I don't know what  
14 happened.  
15 After the police left, I think he came  
16 back around the front parking lot and was on the  
17 front. That's about all I can remember now.  
18 Q But while the police were there, are you  
19 saying that he was in his apartment looking out the  
20 front window?  
21 A Yes.  
22 Q He never left?  
23 A Well, he did come back out, but it was  
24 after they left, I think.

1 Q You saw him after they left?  
2 A Yes. I saw him, Greg, after they left.  
3 Q Where was he?  
4 A He was coming through the parking lot with  
5 a rag upside his head.  
6 Q How long was that from the time he ran  
7 into your house?  
8 A Maybe ten minutes.  
9 Q Did he go back to his apartment when you  
10 saw him?  
11 A I don't know.  
12 Q Where were you when you saw him?  
13 A I was sitting up there in the window,  
14 because I had to go back up stairs.  
15 Q Did you see where he went, where Greg  
16 went?  
17 A He was on the front. He was in front of  
18 the house.  
19 Q Just sitting in the front of the house?  
20 A He wasn't sitting. He was walking. I  
21 think he was kind of mad because he had got hurt.  
22 Q Was he still running at the mouth and  
23 yelling?  
24 A He talks anyway. He is a talker.



1 Q So he stayed right there?  
2 A Well, he might have said something to his  
3 mom. I don't know. I wasn't down there. I was up  
4 in the house.  
5 Q When you saw him, he was in front of the  
6 house after the police left?  
7 A Yes.  
8 Q It was about ten minutes after the  
9 incident?  
10 A Right.  
11 Q From there you don't know where he went?  
12 A I think he went in the house. I don't  
13 know.  
14 I think he went in the house because when  
15 he come out the back, he had a rag up there. He  
16 came through the parking lot. There is a church  
17 parking lot there. They had the gate open.  
18 I seen him come through the parking lot.  
19 He had this rag upside his head. He was still  
20 bleeding.  
21 Q After you saw him at that time from the  
22 second floor window approximately ten minutes after  
23 the incident, did you see him again?  
24 A Well, I seen him again. They were putting

1 him in the car taking him to the hospital.  
2 Q Who was "they"? Who was putting him in  
3 the car?  
4 A I think his mom and my son and his  
5 girlfriend.  
6 Q And you're saying they drove him to the  
7 hospital?  
8 A I think so. I thought it was an  
9 ambulance. It might not have been. So I don't  
10 know. She said it was her car.  
11 Q I'm not asking what she said. Did you see  
12 him?  
13 A As I said, I thought it was an ambulance,  
14 but I don't see too good no more.  
15 Q I guess my question to you is you didn't  
16 see him again other than --  
17 A Except for when he was getting into the  
18 car.  
19 Q Into the car to go to the hospital?  
20 A He got in the car. Whose I don't know.  
21 Q Do you know how many hours it was from the  
22 time this incident happened to the time he got into  
23 the car?  
24 A It had to be about 6:00 o'clock or later.

1 I don't know. I'm not sure of the time because I  
2 didn't look at the clock to see what time it was.  
3 Q Did you stay in your upstairs apartment,  
4 or did you go downstairs?  
5 A I stay upstairs most of the time because I  
6 can't walk that good either.  
7 Q So you didn't talk to him before he went  
8 to the hospital?  
9 A No.  
10 Q Let me ask you about this fight.  
11 It involved your son and your nephew,  
12 right?  
13 A Yes.  
14 Q They're about the same age?  
15 A Yes. They're the same age, only a month's  
16 difference in age.  
17 Q Why were they fighting?  
18 A I don't know.  
19 Q Was that a common occurrence for those  
20 two?  
21 A No.  
22 Q And this is a fight that prompted your  
23 husband to call the police, correct?  
24 A Well, he did.

1 Q And you also called the police?  
2 A I ain't called no police.  
3 Q Was your phone number (773) 471-3243 at  
4 the time?  
5 A Yes. It is still the same number.  
6 Q Is that your house phone?  
7 A That's my house phone. But I didn't call  
8 no police.  
9 Q You're saying it was your husband that  
10 called the police?  
11 A Yes, my husband that called the police.  
12 Q When you saw this fight, did you see it  
13 from the second floor window initially?  
14 A Yes. Then I came downstairs.  
15 Q They were punching each other?  
16 A Yes.  
17 Q They were on the ground?  
18 A Somebody was on the ground. I don't know  
19 who.  
20 Q Did you see your nephew, Greg, waving  
21 around a tire iron or crowbar?  
22 A He picked one up. That's when my husband  
23 called the police.  
24 Q So you saw him pick up the tire iron? Did



Page 71  
Case 1  
35.

1 you see what he did with it?

2 **A No, I didn't.**

3 **Q** And from the time that you saw that until  
4 the time that you made it outside from your second  
5 floor apartment -- strike that.

6 Did you see anyone else pick up that tire  
7 iron?

8 **A No.**

9 **Q** Were there other people outside in the  
10 front of your house at the time that you saw these  
11 two fighting each other?

12 **A I didn't see nobody else. Just most of**  
13 **the family was out there. I was on the porch, my**  
14 **house, on the porch, Alice, and Greg and Norman.**

15 **Q** Well, is it fair to say no one was able to  
16 break up the fight until the police got there?

17 **A Well, they pulled up, and when they did, I**  
18 **guess they must have got tired. I don't know.**

19 **Q** Your nephew and your son must have gotten  
20 tired?

21 **A Both of them might have gotten tired. I**  
22 **don't know.**

23 **Q** Had they been fighting for some time?

24 **A Maybe 10, 15 minutes.**

1 porch?

2 **A No, in the doorway, no further than that.**

3 **Q** Do you know who broke up the fight, or did  
4 you see the fight break up?

5 **A I can't say for sure.**

6 **Q** Maybe I didn't ask that question very  
7 well.

8 **A I never seen who did what.**

9 **Q** When you got outside, or when you got to  
10 the first floor and looked out the door, did you see  
11 the police breaking up the fight?

12 **A Well, they had pulled up in a squad car,**  
13 **and they got out. They were talking to them. I**  
14 **didn't see nobody put no hands on nobody. They**  
15 **might have said break it up, might not have. I**  
16 **don't remember. I don't know. I don't remember.**

17 **Q** Is it fair to say -- I mean, this happened  
18 five and a half years ago.

19 Is it fair to say your memory has faded  
20 from --

21 **A Well, I have a good remembrance, but when**  
22 **incidents come up, you think back on them and you**  
23 **can't remember every detail.**

24 **Q** And some of the details that you're

1 **Q** Punching each other at various times,  
2 picking up --

3 **A Yes, everybody moving around. Strong men.**  
4 **What can I say?**

5 **Q** Did you ever see them go to the ground at  
6 the times that you saw them?

7 **A They might have. I don't know. I can't**  
8 **say for sure. I really don't know.**

9 **Q** Let me ask you this. You said you saw  
10 Greg at some point with the tire iron in his hand.  
11 Did you see anyone else with the tire iron?

12 **A Not that I know of, no.**

13 **Q** Did you see anyone else with a type of  
14 weapon?

15 **A No.**

16 **Q** Did you ever see anyone else involved in  
17 the fight except for those two?

18 **A Just those two.**

19 **Q** When you came outside, the police were  
20 already there? Is that what you testified to?

21 **A Yes.**

22 **Q** And you remained standing in your doorway?

23 **A Right.**

24 **Q** You never actually went outside onto the

1 testifying to today is from speaking with your other  
2 family members, correct?

3 **A I try not to talk about it too much.**

4 **Q** But you have spoken to your other family  
5 members?

6 **A Yes.**

7 **Q** About this incident and about what  
8 happened? Is that fair to say?

9 **A Maybe. I don't know.**

10 **Q** Now, you mentioned that there was a female  
11 police officer who was there, correct?

12 **A Yes.**

13 **Q** There was a male police officer?

14 **A Yes.**

15 **Q** And when you first saw him, he was leaning  
16 on the banister?

17 **A There might have been two males. I can't**  
18 **remember.**

19 **Q** That wasn't my question.

20 Do you remember if there was a second male  
21 police officer there when you first came down?

22 **A There might have been.**

23 **Q** And at this point you testified that Greg  
24 was actually in the doorway to the first floor?

1 A Yes. After the fight broke up, that's  
2 where he stood at.  
3 Q He wasn't outside on the porch?  
4 A (Indicating) The doorway is here. He was  
5 standing right there in the doorway. He wasn't on  
6 the porch. He had went up in the doorway.  
7 Q That's what I'm trying to clarify.  
8 A Okay.  
9 Q He was in the doorway, right?  
10 A Yes. I was in the other doorway.  
11 Q You were in the other doorway that leads  
12 to the second floor?  
13 A Yes.  
14 Q Was the first floor door opened?  
15 A No.  
16 Q Where was your sister Alice at this time?  
17 A She was standing out on the sidewalk  
18 talking to the -- I think it was the lady policeman  
19 outside the gate.  
20 Q And you testified at that point that this  
21 male police officer -- did he approach Greg or did  
22 Greg come out from the doorway?  
23 A Greg was standing in the doorway. He  
24 didn't come out on the porch. He didn't even

1 come -- he was in the doorway. He didn't even come  
2 down to the porch. He didn't do anything. He was  
3 standing there.  
4 Q And he remained there?  
5 A Yes.  
6 Q And at this time your sister Alice was  
7 speaking to the female police officer?  
8 A She was down on the sidewalk talking to  
9 somebody.  
10 Q Do you recall her speaking to a female  
11 police officer at that point?  
12 A There might have been two or three. I  
13 know there was a female. She was kind of tall.  
14 That's all I know.  
15 Q And the police officer, you remember him  
16 saying words to the effect about -- something to the  
17 effect of arresting Greg, correct?  
18 A Yes.  
19 Q Telling him --  
20 A That he could arrest him now. He said,  
21 For what? I didn't do anything.  
22 Q And you remember this male police officer  
23 telling him he was going to arrest him?  
24 A Yes.

1 Q What was Greg's demeanor during this time?  
2 A He was just talking.  
3 Q When you say "he was just talking," can  
4 you describe what he was saying?  
5 A He was saying, I didn't do nothing. I  
6 didn't do nothing.  
7 Q Was he yelling?  
8 A No. He was standing there in the doorway.  
9 Q Did he appear to be drunk or under the  
10 influence of drugs?  
11 A I don't know nothing about being drunk.  
12 Q How about under the influence?  
13 A I don't know what his habits are,  
14 sweetheart.  
15 THE WITNESS: I didn't mean to call him  
16 that.  
17 MR. HEARING OFFICER: Oh, he's a  
18 sweetheart is what you're saying?  
19 THE WITNESS: No. That's just the  
20 language that I use sometime. I'm getting carried  
21 away. No, I'm not getting carried away. I use  
22 sweetheart quite a bit.  
23 BY MR. FAHY:  
24 Q If I could ask you a few more questions,

1 ma'am.  
2 When the male police officer was telling  
3 Greg or mentioning to Greg something to the effect  
4 of an arrest, was Greg still in the doorway?  
5 A Yes, he was.  
6 Q And is it your testimony that Greg was in  
7 the doorway when he was struck with the baton?  
8 A Yes.  
9 Q Where was he struck with the baton first?  
10 A I think on the calf of the leg, on his  
11 thigh -- no, no. It was around here, the thigh.  
12 Then he hit him on the shoulder.  
13 (Indicating) Then he hit him up there.  
14 Q This male police officer, was he facing  
15 Greg in the doorway when this happened?  
16 A Yes.  
17 Q They were face to face?  
18 A Yes.  
19 Q Greg never went down when he was hit by  
20 the baton, did he?  
21 A No, he didn't go down.  
22 Q He continued to stay face to face while he  
23 was being struck with this baton?  
24 A I guess so, yes.



Page 81

Page 83

1 Q At some point, then, Greg just ran into  
2 your apartment building?

3 A He went in my doorway.

4 Q And then?

5 A Upstairs.

6 Q Did you lock the door behind him?

7 A Yes, I did.

8 Q So the door was locked when the officer  
9 went after him, correct?

10 MS. JACKSON: Objection.

11 THE WITNESS: He did not go up there.

12 BY MR. FAHY:

13 Q Did the officer try to get into the  
14 doorway?

15 A No, he did not. He didn't even ring the  
16 doorbell.

17 Q If the officer did try to go in the  
18 doorway, it was locked, correct?

19 MS. JACKSON: Objection, speculation.

20 MR. HEARING OFFICER: She testified the  
21 first door was locked, the second floor was not. He  
22 went up the second floor.

23 THE WITNESS: He went up my door. When he  
24 went up, I locked the door.

1 A He went out the back door, went downstairs  
2 in his momma's house.

3 Q And at that point did you see him? At  
4 some point did you come back down to see him looking  
5 out the window?

6 A No. I didn't go back down there.

7 Q You stayed on the second floor?

8 A I stayed upstairs. There wasn't nothing I  
9 could do out there. There wasn't nothing I could do  
10 in the first place.

11 Q Do you remember the officer also ordering  
12 Greg to the ground at some point when he was trying  
13 to arrest him?

14 MS. JACKSON: Objection to the  
15 characterization that he was trying to arrest him.  
16 That's misstating.

17 THE WITNESS: He never did.

18 MR. HEARING OFFICER: She actually put out  
19 an answer, "He never did."

20 You have speak up a little bit.

21 THE WITNESS: He didn't get down.

22 MR. HEARING OFFICER: But the question  
23 really was did the officer order him to get down?

24 THE WITNESS: He said, Get down.

Page 82

Page 84

1 HEARING OFFICER JOHNSON: He didn't get in  
2 the first floor?

3 THE WITNESS: He didn't get in the first  
4 floor.

5 BY MR. FAHY:

6 Q After he went upstairs, you locked that  
7 door, correct?

8 A Yes.

9 MR. HEARING OFFICER: The second floor  
10 door?

11 THE WITNESS: Yes. But he didn't pursue  
12 him. He went down off the porch. He didn't go  
13 after Greg after that.

14 BY MR. FAHY:

15 Q After Greg ran up to your second floor  
16 apartment, did you stay outside in the doorway?

17 A No. I told you I went upstairs.

18 Q You went upstairs?

19 A Yes, I went upstairs.

20 Q After Greg?

21 A Yes.

22 Q Was Greg upstairs when you went up there?

23 A Yes.

24 Q Where did he go from there?

1 BY MR. FAHY:

2 Q Did the officers remain outside for a  
3 while?

4 A Yes.

5 Q Did your husband, Norman Perry, Senior,  
6 did he remain outside?

7 A Yes, he stayed out there.

8 Q And you remember at some point an officer  
9 with a white shirt being on the scene?

10 A He said it was. My husband said there was  
11 one out there.

12 Q I'm sorry?

13 A My husband said there was one out there  
14 with the white shirt on.

15 Q He told you that later?

16 A Yes.

17 Q Are you saying you didn't see a sergeant  
18 out there?

19 A No.

20 Q In addition to your husband being out  
21 there, did Alice stay outside there?

22 A Yes, she was out there.

23 Q In the front?

24 A Yes.

1 Q Were you looking out your second floor  
2 window after you got back upstairs?  
3 A Yes.  
4 Q And that's how you saw Alice and your  
5 husband out there?  
6 A Yes.  
7 Q When you were looking out that second  
8 floor window, just so I'm clear, did you see an  
9 officer with a white shirt?  
10 I'm just not clear if it's something you  
11 don't remember.  
12 A There might have been somebody out there  
13 with a white -- as I told you, my eyes are bad. I  
14 don't see that good. I have what you call  
15 cataracts.  
16 (Indicating) This eye don't work too  
17 well. I had a lens put in this eye. I only see out  
18 one eye. At the time, I wasn't seeing out either  
19 eye.  
20 Q Ma'am, were there other fights at the  
21 house that day after this one?  
22 A No.  
23 Q Do you remember someone from your home  
24 calling the police later that day regarding a fight?

1 A Not that I know of.  
2 Q Well, let me ask you this.  
3 At 10:58 that evening did someone from  
4 your home call and report that there was a 32-year  
5 old male that was bleeding, he was hit in the head,  
6 and they didn't know how it happened, and they were  
7 requesting the police? Did you make that call from  
8 your home?  
9 A It wasn't me.  
10 Q Let me ask you this. After midnight, just  
11 after midnight, which would have been October 8th,  
12 did you call the police at that time indicating that  
13 there were family members in front about to fight?  
14 A October the 8th?  
15 Q It would have been the same day after  
16 midnight.  
17 A Not that I know of.  
18 Q Do you know who might have called from  
19 your home?  
20 MS. JACKSON: Objection, calls for  
21 speculation.  
22 MR. HEARING OFFICER: Overruled. You  
23 don't know who would have called?  
24 THE WITNESS: No.

1 BY MR. FAHY:  
2 Q Ma'am, from the time this incident  
3 happened in 2006 until today, you've always lived at  
4 that home?  
5 MS. JACKSON: Objection, asked and  
6 answered.  
7 MR. FAHY: I'm not sure if it was.  
8 HEARING OFFICER JOHNSON: I'm not sure if  
9 it was either. It's a straightforward question.  
10 Have you always lived at the same place?  
11 THE WITNESS: Yes.  
12 MS. JACKSON: We stipulate that the family  
13 has remained at this location since October 7, 2006.  
14 MR. HEARING OFFICER: So from when this  
15 happened until now, you've lived at the same place?  
16 THE WITNESS: Yes.  
17 MS. JACKSON: Everyone has. We stipulate  
18 to that fact.  
19 BY MR. FAHY:  
20 Q Do you remember being interviewed by the  
21 Office of Professional Standards regarding this  
22 incident?  
23 A Yes.  
24 Q Do you remember the interview occurring on

1 June 8, 2009?  
2 A I'm not sure of the date, but they did  
3 come out to the house and interview me, because I  
4 wasn't able to go down there and meet with her.  
5 Q Do you recall it being about three years  
6 after this incident happened?  
7 MS. JACKSON: Mr. Hearing Officer, we  
8 stipulate that the records show that the witness was  
9 interviewed on June 8, 2009, by IPRA.  
10 HEARING OFFICER JOHNSON: Okay.  
11 BY MR. FAHY:  
12 Q And, ma'am, you were available for an  
13 interview any time before that June 8th interview?  
14 MS. JACKSON: Objection, relevance.  
15 MR. HEARING OFFICER: Overruled.  
16 THE WITNESS: I was.  
17 MS. JACKSON: Well, Mr. Hearing Officer,  
18 this witness wouldn't have known how many times the  
19 IPRA investigator called her, so this is not even  
20 the best evidence.  
21 MR. HEARING OFFICER: Well, the only  
22 question right now is she would have been available  
23 to speak with them whenever they got around to it,  
24 right?



Page 89

Page 91

1 MS. JACKSON: Okay. So I object to  
2 foundation. When is this would have been available?

3 MR. FAHY: I'll withdraw the question. It  
4 is what it is. She lived there the entire time.

5 I have no further questions.

6 MS. JACKSON: I just have a few follow up  
7 questions, Ms. Perry.

8 REDIRECT EXAMINATION

9 BY MS. JACKSON:

10 Q You were asked about whether your nephew,  
11 Greg, at any point picked up a tire iron.

12 Do you recall being asked that question?

13 A Somebody asked it. I don't remember who.

14 Q And when he was on the porch -- let me ask  
15 you this.

16 Did you see what he did with the tire  
17 iron?

18 A I think that's when my husband called the  
19 police, when he picked up the tire iron. I'm not  
20 even sure now.

21 Q Did he have a tire iron in his hand or in  
22 his possession at any time that you were outside?

23 A No. He must have put it down somewhere,  
24 because I didn't see him with that.

1 A No.

2 Q After Greg was hit with the long black  
3 stick, did he try to fight back?

4 A No.

5 MS. JACKSON: I have no further questions.

6 MR. FAHY: No further questions.

7 HEARING OFFICER JOHNSON: Thank you for  
8 coming.

9 (Witness sworn.)

10 NORMAN PERRY,  
11 called as a witness herein, having first been duly  
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. JACKSON:

15 Q Good afternoon.

16 A Good afternoon.

17 Q Could you please introduce yourself to the  
18 Hearing Officer.

19 A My name is Norman Perry.

20 Q And you spell your last name P-e-r-r-y; is  
21 that right?

22 A Right.

23 Q Mr. Perry, try to keep up your voice up.

24 A Okay.

Page 90

Page 92

1 Q Did you yourself ever see him with it in  
2 his hand?

3 A I don't think so.

4 Q At any point while you were outside in the  
5 doorway, Ms. Perry, did you hear Greg ever use  
6 profanities or disrespect the officer with the black  
7 stick in any way?

8 A No. All he said -- well, never mind.

9 Q What did you hear him say?

10 A I didn't do anything. What for? I didn't  
11 do anything.

12 Q At any point did you see Greg approach the  
13 officer as if he was going to physically --

14 A No.

15 Q At any time did you see the officer have  
16 to break up the fight between Greg and Norman?

17 A No.

18 Q At any time did any officer approach you  
19 to speak with you about what happened?

20 A No.

21 Q The female officer --

22 A No, she did not.

23 Q Any other officer outside of the one with  
24 the long black stick?

1 Q Where do you currently live, Mr. Perry?

2 A 6408 South Marshfield.

3 Q And you were living there in October of  
4 2006; is that right?

5 A Right.

6 Q And you live on the second floor of that  
7 home?

8 A Second floor.

9 Q And you live there with your wife?

10 A Yes.

11 Q And that's Ms. Etta; is that correct?

12 A Etta Larkins.

13 Q And do you also live there with your son?  
14 Is that accurate?

15 A Yes.

16 Q And that's Greg Mitchem?

17 A That's my nephew.

18 Q That's your nephew. I'm sorry.  
19 Norman Mitchem is your son?

20 A Right.

21 Q Now, on October 7, 2006, police officers  
22 came to your home; is that correct?

23 A Right.

24 Q Did you call those?

1 A I did.  
2 Q You called 911?  
3 A Yes.  
4 Q Can you tell the Hearing Officer what made  
5 you call 911?  
6 A Well, I seen they had words, and I figured  
7 they going to start to fight, so I called. I called  
8 before they got into it.  
9 Q And where were you when you saw them  
10 having words?  
11 A I was looking out the window when he was  
12 talking to -- my son was talking to him outside.  
13 And some words led to another. Then they went  
14 downstairs. That's when I called the police,  
15 because I know they were going to get it on.  
16 Q Norman and Greg?  
17 A Correct.  
18 Q Did you eventually see them get into a  
19 fight?  
20 A Yes. They was tussling, going on, just  
21 tussling.  
22 Q When you say "tussling," describe that for  
23 the Hearing Officer.  
24 A Wrestling, throwing one another around

1 back and forth.  
2 Q Did you see anybody punch?  
3 A I didn't see no fist punches.  
4 Q Did you see any kicks?  
5 A No kicks.  
6 Q At some point did you see Greg pick up any  
7 type of instrument?  
8 A Not really. I don't think so. I'm not  
9 too sure on that.  
10 Q So tell me what happened after you made  
11 the 911 call. Did you remain on the second floor?  
12 A Yes, I did.  
13 Q At some point did you leave the second  
14 floor?  
15 A Yes. I came downstairs. I was going to  
16 break it up, but they are bigger than I am. So when  
17 the police woman got there, she told them to get up  
18 off the ground and stop fighting. So they stopped.  
19 Q Where were you when the police woman  
20 arrived?  
21 A I was downstairs.  
22 Q Was anybody else from your family outside  
23 at this point?  
24 A I can't remember that either. I can't

1 remember.  
2 Q When you say you were outside, where were  
3 you outside?  
4 A Standing in front of the yard out toward  
5 the sidewalk.  
6 Q So had you exited the porch? Had you left  
7 the porch?  
8 A I had left the porch and went down out in  
9 front.  
10 Q When the female police officer arrived,  
11 were Greg and Norman still fighting?  
12 A Yes. She broke it up.  
13 Q How did she break it up?  
14 A She told them to get up and stop fighting.  
15 Q And they stopped?  
16 A Yes.  
17 Q Did she have to physically touch them to  
18 separate them?  
19 A No.  
20 Q Where did Greg go after they stopped  
21 fighting?  
22 A I believe he went back up on the porch.  
23 Q Had any other officers arrived at this  
24 point?

1 A A sergeant, a lady sergeant, I believe. I  
2 can't hardly remember.  
3 Q It's been a long time?  
4 A Yes. I've been pretty sick.  
5 Q I'm sorry to hear that.  
6 Let me draw your attention to when the  
7 female officer told them to break it up. You said  
8 they stopped fighting; is that correct?  
9 A Yes.  
10 Q Was there a male officer there at that  
11 point with a regular uniform on?  
12 A I can't even remember that either.  
13 Q At some point did you see a male officer  
14 come onto the porch and approach Greg?  
15 A I think when he went up on the porch, they  
16 were just standing there. And then I was standing  
17 there, too, and they was talking back and forth, you  
18 know, words, talking about I don't know.  
19 Q Who was talking back and forth?  
20 A The police talking to Greg, I guess,  
21 saying something.  
22 Q Where was the police officer who was  
23 talking to Greg when they were going back and forth?  
24 A He was standing in the yard.



Page 97

Page 99

1 Q Where was Greg?  
2 A He was standing on the steps.  
3 Q And where were you?  
4 A (Indicating) I was standing on this side.  
5 Q On this side of what?  
6 A On the side of the porch on the first  
7 floor on the stairway.  
8 Q So you were on one of the stairs of the  
9 porch? Is that accurate?  
10 A Yes, almost at the bottom of the steps.  
11 Q Where was Greg in relation to you?  
12 A He was up on the porch, right up on the  
13 porch.  
14 Q Where was he in relation to either of the  
15 two doors?  
16 A Well, he was standing between the first  
17 floor and second floor door.  
18 Q So he was standing in between both of the  
19 doors?  
20 A Right.  
21 Q Were either of those doors opened or  
22 closed?  
23 A My door, I left it open. I don't know  
24 about the other door.

1 A I don't know. I guess what you call it is  
2 a club or whatever he had. I don't know what it  
3 was, but I know he got hit with it upside the head,  
4 leg, whatever.  
5 Q What was Greg doing at the time he was hit  
6 with it?  
7 A He was just holding up his hands.  
8 Q Can you show us what you saw Greg doing  
9 with his hands?  
10 A He was holding them up. I guess he got  
11 hit so many times, he ran up the steps and closed  
12 the door.  
13 Q You said they were going back and forth;  
14 is that correct?  
15 HEARING OFFICER JOHNSON: Greg and the  
16 police officer?  
17 MS. JACKSON: Right.  
18 BY MS. JACKSON:  
19 Q Greg and the police officer were going  
20 back and forth?  
21 A No.  
22 Q Let me ask you a better question.  
23 You said Greg talks, talks, talks. He  
24 does a lot of talking?

Page 98

Page 100

1 Q Where was your wife? Where was Ms. Etta  
2 at that point?  
3 A I couldn't even say that either.  
4 Q So can you tell the Hearing Officer what  
5 happened when the officer came near Greg?  
6 A Well, they was talking. And Greg, he is  
7 always talking. He's talk, talk, talk. And I guess  
8 words went to words. And the next thing I know bam,  
9 bom, boom.  
10 Q And what does that mean, "bam," "bom,"  
11 "boom"?  
12 A That the officer hit him with the stick or  
13 something.  
14 Q Keep going.  
15 A Then he ran up my stairway up to the  
16 second floor and locked the door.  
17 Q Did you see what the officer hit him with?  
18 A (Indicating) I don't know. Something  
19 like this. I don't know what it was.  
20 Q And you have a walking cane in your hand;  
21 is that right?  
22 A No, I didn't have no walking cane at that  
23 time.  
24 Q I'm speaking right now.

1 A Yes, he do.  
2 Q Was he talking to the police officer who  
3 hit him with the club?  
4 A Right.  
5 Q Do you remember what they were saying to  
6 one another?  
7 A Well, there wasn't no bad words coming  
8 out, if you ask me. He didn't say no bad words,  
9 nothing like that. Something about, Well, you  
10 didn't go down yet, or something like that. Then  
11 bop, bop.  
12 Q Before the bop, bop, and when you say  
13 "bop, bop," are you talking about when he hit him?  
14 A Yes.  
15 Q Before he hit him, before the officer hit  
16 him with the club, did he say anything to Greg?  
17 A That was going so fast. I can't remember  
18 what was said.  
19 Q When he hit him with the club, were Greg  
20 and Norman still fighting?  
21 A No. That was over. It was all over. The  
22 fighting was over.  
23 Q Where did the officer go who hit him with  
24 the club after Greg ran away?



Chicago Police  
Bruce A.  
ago Police Bo  
ice Askew  
Page  
A Yes.  
Q Your son  
time?  
A Yes.  
Q N

1 A See, I went around to the back to get in  
2 the house. I don't know where the officer went.  
3 Then I come down the front steps.  
4 Q And were officers still there when you  
5 came down the front steps?  
6 A They could have been. I don't know.  
7 There was two, three officers out there, a sergeant,  
8 the one that broke up the fighting.  
9 Q That's the female, right?  
10 A Right.  
11 Q And when you say broke it up, you mean she  
12 just called out for them to stop?  
13 A Stop. And they stopped.  
14 Q At any point she didn't touch them to  
15 break it up?  
16 A I don't believe so, no.  
17 Q And you said there was other officers?  
18 A Yes.  
19 Q You said there was a sergeant?  
20 A Yes.  
21 Q How did you know he was a sergeant?  
22 A It was a she sergeant.  
23 Q Okay. How did you know she was a  
24 sergeant?

1 A Because she had stripes on, a white shirt  
2 with stripes. They must have called her for some  
3 reason. I don't know why, but they called her.  
4 Q At any point did the female sergeant, did  
5 she approach you and ask you about what happened?  
6 A Well, we might have said what happened. I  
7 don't know. I really can't remember all of this.  
8 Q Did you hear the officer who hit Greg with  
9 the baton, did you at any point hear him say  
10 something to Greg about arresting him?  
11 A Something about, If you don't shut up, I'm  
12 going to arrest you, or something. I'm not even  
13 sure on that.  
14 MS. JACKSON: I don't have anything else  
15 for you, Mr. Perry. Thank you.  
16 CROSS-EXAMINATION  
17 BY MR. FAHY:  
18 Q When you called 911, you were on the  
19 second floor in your apartment?  
20 A Yes.  
21 Q And you were looking out the window?  
22 A Yes.  
23 Q Who else was in your apartment at that  
24 time?

1 A Me and my son.  
2 Q Was there anyone else in your apartment  
3 besides you and your son when you looked out the  
4 window and saw the fighting about to begin?  
5 A My wife might have been there, but I doubt  
6 it. I'm not even sure. All this talking,  
7 hollering, screaming, cussing, it don't make sense.  
8 Don't get started.  
9 So before it got started, I called the  
10 police. I called 911. I'm the one that called,  
11 because I didn't want whatever. I didn't know what  
12 was going to happen, but I called to keep from  
13 anything happening.  
14 Q I understand you called 911, sir.  
15 My question is you're pretty sure your  
16 wife was not there in the apartment?  
17 A I don't think so.  
18 Q Does Alice Larkins live on the first  
19 floor?  
20 A Who?  
21 Q Alice Larkins.  
22 A Alice Larkins?  
23 Q Yes.  
24 A Yes. That's Greg's mother.

1 Q When you looked out the window and saw the  
2 fighting, was she in your apartment?  
3 A Who?  
4 Q Alice.  
5 A Alice in my apartment?  
6 Q Yes.  
7 A No.  
8 Q So it was just you, and I'm sorry, you  
9 mentioned someone else. Who else was in there?  
10 A My son. He was upstairs.  
11 Q And what's your son's name?  
12 A Norman.  
13 Q But when you looked out the window, you  
14 saw Greg fighting?  
15 A No. I looked out the window. My son and  
16 Greg had words, and one word led to another. And  
17 they wanted to fight.  
18 Q But what I'm asking you is your son was  
19 outside with Greg?  
20 A No. He was inside.  
21 Q So your son was having words while he was  
22 in the apartment with Greg?  
23 A Out the window.  
24 Q So they were just yelling back and forth?

1 A Yes.  
2 Q Your son was in the apartment at that  
3 time?  
4 A Yes.  
5 Q Now I understand.  
6 So that's what you remember happening, and  
7 you don't remember anyone else being there?  
8 A No.  
9 Q And based upon this exchange of words, you  
10 called 911?  
11 A Yes.  
12 Q Do you remember how many times you called  
13 911?  
14 A Well, I called once. I called once. I'm  
15 always calling with something going on wrong there.  
16 I call the police when something is not right.  
17 Q And when you called 911, your son was in  
18 the apartment with you?  
19 A No. He went downstairs.  
20 Q He went downstairs. And that's when you  
21 called 911?  
22 A Yes.  
23 Q So you were in the apartment by yourself  
24 at that point, correct?

1 A Yes.  
2 Q When you got downstairs, did you see your  
3 wife at all?  
4 A All I could see was them two.  
5 Q Do you remember where your wife was?  
6 A I don't remember.  
7 Q You don't remember seeing her at all?  
8 A I might have, maybe not. I don't know.  
9 Q When you got downstairs, did you -- you  
10 said you walked right outside into the yard?  
11 A I got outside, telling them to stop, stop.  
12 Q Were the police on the scene at that time?  
13 A No. She just pulled up. She got out and  
14 broke them up, told them to stop, get up.  
15 Q Who else was outside at that time?  
16 A I couldn't say.  
17 Q Were there other people out there, though?  
18 A There could be. I couldn't say.  
19 Q Why were they fighting?  
20 A Words. One said one word, and one didn't  
21 like it, cussing, didn't like it. That's what got  
22 it on.  
23 Q Do you remember what the fight was about?  
24 A It wasn't much of nothing, really. They

1 A I believe so. I'm not too sure.  
2 Q Do you remember seeing your nephew Greg  
3 with a tire iron or a crowbar?  
4 A All I seen was they was tussling out  
5 there.  
6 Q When you called 911, did you inform  
7 them --  
8 A I called them before that.  
9 Q But did you inform them at any time that  
10 Greg had a crowbar?  
11 A I could have. I don't know. I can't  
12 remember.  
13 Q I know it's going back a long ways.  
14 A Yes.  
15 Q So it's fair to say your memory is pretty  
16 faded about what happened?  
17 A Well, I had cancer. I had a pacemaker. I  
18 have been through a lot since then.  
19 Q I understand. I'm sorry to hear that.  
20 Let me ask you this. After you called  
21 911, did you go downstairs?  
22 A Yes.  
23 Q Did you go down there by yourself at that  
24 point?

1 always get into it.  
2 Q So they fight fairly often?  
3 A Well, in a way, but nothing ever happens.  
4 Q Did you see them punching each other?  
5 A No.  
6 Q No punches were thrown?  
7 A I didn't see any punches, just tussling.  
8 Q But when you left your second floor  
9 window, the fight hadn't started?  
10 A It did on then.  
11 Q It was starting?  
12 A Yes.  
13 Q When you got downstairs, that's when the  
14 police arrived?  
15 A Yes.  
16 Q And the fight was breaking up at that  
17 point?  
18 A She told them to get up, the officer.  
19 Q Is it fair to say that your nephew Greg  
20 continued to mouth off more or less?  
21 A Like always.  
22 Q Was he yelling?  
23 A No.  
24 Q Who was he talking to, or who was he



1 mouthing off to?  
2 A My son.  
3 Q He was talking to your son?  
4 A Yes.  
5 Q They were still exchanging words?  
6 A I didn't say they were. Greg, he would  
7 talk back to anybody. He never shuts up. I don't  
8 care who it is. But he never hurt nobody.  
9 Q After the female police officer arrived,  
10 do you remember more police coming?  
11 A Yes, a sergeant lady.  
12 Q You remember the sergeant being a lady?  
13 A Yes, I do.  
14 Q And do you remember speaking to that  
15 sergeant?  
16 A I think I had said that nobody was paying  
17 me any attention. I'm the one that called.  
18 Q Do you remember Alice Larkins speaking to  
19 the sergeant?  
20 A She could have. I'm not sure.  
21 Q Was she outside when the sergeant arrived?  
22 A I believe she was.  
23 Q Was your wife Etta outside?  
24 A I think so.

1 Q Do you remember Etta also speaking to the  
2 sergeant?  
3 A I can't remember anything.  
4 Q When you say you can't remember anything,  
5 is that because of the --  
6 A She was out there when all the other  
7 incident had happened when he was on the step.  
8 Q Who was?  
9 A Etta.  
10 Q Where was she?  
11 A Ms. Larkins. They was all right there on  
12 the landing.  
13 Q So when this incident happened between the  
14 police officer and Greg, Etta was on the landing?  
15 A What police officer?  
16 Q At some point was there some incident with  
17 a police officer and Greg?  
18 A Words. That's all, words.  
19 Q Did anything else happen?  
20 A No, nothing else happened until he got up  
21 on the step and started hitting him.  
22 Q Let me ask you this. At the time that  
23 you're saying that there was an officer hitting your  
24 nephew Greg with the baton, where was Etta? Was she

1 at the landing at that time?  
2 A She probably was. But I was out there.  
3 And his momma was out there, too.  
4 Q Was she also on the landing?  
5 A Yes, I think so.  
6 Q And so were they further away from the  
7 incident or closer than you were?  
8 A He was up by his door. She was on the  
9 second or third step. I'm on the bottom step.  
10 Q When you say "she," who is she?  
11 A His mother.  
12 Q And where was Etta?  
13 A I couldn't say.  
14 Q You don't remember?  
15 A No.  
16 Q When words were exchanged between the  
17 officer and Greg, you testified that the officer at  
18 some point used his baton to hit him?  
19 A He did hit him.  
20 Q Were they standing face to face when he  
21 hit him?  
22 A He came up where Greg was.  
23 Q And at that point, were they face to face  
24 with each other?

1 A Just about, yes. And that's when he  
2 started using that baton, whatever they call it. He  
3 said, You ain't going down yet? He hit him again in  
4 the back of the head. And he ran upstairs.  
5 Q Did Greg ever go down?  
6 A He didn't go down. That's when he ran.  
7 Q Mr. Perry, did he continue to be face to  
8 face with him at this time?  
9 A He was, but he turned away. When he  
10 starting hitting him, he turned and ran upstairs.  
11 Q So when he started hitting him, Greg  
12 turned and ran upstairs; is that correct?  
13 A After he got that last lick.  
14 Q Was your nephew Greg, was it clear to you  
15 that he was under the influence of some type of  
16 drugs or alcohol?  
17 A He could have been. I don't know.  
18 Q Do you remember telling anyone in this  
19 investigation that your nephew Greg was so messed up  
20 from possible consumption of drugs that he did not  
21 fall to the ground when he was struck by the police  
22 officer?  
23 MS. JACKSON: Objection, mischaracterizes  
24 the statement, improper impeachment.

1 **HEARING OFFICER JOHNSON:** Well, I think he  
2 has to ask a question first and then go to the  
3 impeachment.

4 Is that the question you want to ask?

5 **MR. FAHY:** Yes.

6 **MS. JACKSON:** And my objection is improper  
7 impeachment.

8 **HEARING OFFICER JOHNSON:** I don't think  
9 he's impeaching him yet. I think he's just asking a  
10 straight up question.

11 **MS. JACKSON:** The prior question was had  
12 he consumed alcohol or drugs, and this is  
13 purportedly an impeaching question.

14 **HEARING OFFICER JOHNSON:** He said he  
15 didn't know.

16 **MR. FAHY:** I'll lay a little better  
17 foundation.

18 **BY MR. FAHY:**

19 Q Sir, were you interviewed about this  
20 incident by the Office of Professional Standards on  
21 October 26, 2006?

22 A I don't think so.

23 Q Do you remember being interviewed by an  
24 investigator by the name of Moira Webb?

1 A I don't hardly remember anything, because  
2 I've been through a lot. I told you that. I can't  
3 remember all of this. I don't know.

4 Q If I could call your attention to page  
5 three of that statement at the very bottom, the last  
6 four sentences.

7 A I see my name signed, but I'm not sure of  
8 anything. I've been pretty sick. I've had cancer.  
9 I got a pacemaker.

10 Q I understand that, sir.

11 **MR. HEARING OFFICER:** He's just going to  
12 ask you a pretty straightforward question, but he's  
13 giving you the paper to look at.

14 He's going to direct you where to look at.

15 **BY MR. FAHY:**

16 Q Could I call your attention to page three?

17 A Yes.

18 Q Are you on page three, sir?

19 **HEARING OFFICER JOHNSON:** It looks like he  
20 might be on four there.

21 **THE WITNESS:** Yes.

22 **BY MR. FAHY:**

23 Q If I could call your attention to the very  
24 bottom of that page, the last sentence, do you

1 A No.

2 Q Do you remember them coming to your home  
3 at 6408 South Marshfield on that day?

4 A No.

5 **MR. FAHY:** If I may approach. I will mark  
6 this Respondent's 1.

7 (WHEREUPON, Respondent's Exhibit  
8 No. 1 was marked for  
9 identification.)

10 **BY MR. FAHY:**

11 Q Sir, I'm handing you what's been marked as  
12 Respondent's Exhibit No. 1.

13 A I see my initials. Yes.

14 Q Is this the statement that you gave to the  
15 OPS investigator?

16 A That's what they say I did. I'm not sure.

17 Q Do your initials appear on each of those  
18 pages?

19 A I'm pretty sure they are. I guess.

20 Q And if I can call your attention to page  
21 four, is that your signature on page four?

22 A Yes.

23 Q Do you recall, after looking at that  
24 document, giving that statement to OPS?

1 recall during your interview with Investigator Webb  
2 on October 26, 2006, stating that your nephew Greg  
3 Larkins was so messed up from the possible  
4 consumption of drugs that he did not fall to the  
5 ground when struck by the officer and did not stop  
6 talking or running his mouth?

7 A I don't know nothing like that. No.

8 Q Are you telling me that you did not say  
9 that?

10 A I don't remember. I don't remember I'm  
11 saying this.

12 Q You don't remember?

13 A No, I don't.

14 Q Fair enough. So as you sit here today, do  
15 you remember whether your nephew Greg was messed up  
16 from drugs on that day?

17 A How would I know? I don't run with them.  
18 I didn't see what's going on. Then I tried to call  
19 the police to break it up, not to get something  
20 started.

21 Q Is that a yes or a no?

22 A What are you saying?

23 Q Do you recall him being messed up on drugs  
24 that day?



1 A He looks the same to me every day.  
2 Q Did he use drugs often?  
3 A I do not know what he does.  
4 Q Do you remember your nephew Greg telling  
5 the police that he's not going to jail, or words to  
6 that effect? I'm asking you if you remember.  
7 A Sort of.  
8 Q Something along those lines?  
9 A For what?  
10 Q I'm asking you if you remember him saying  
11 that.  
12 A I'm asking you what for?  
13 HEARING OFFICER JOHNSON: He's just asking  
14 when the police were there, do you remember Greg  
15 saying that?  
16 THE WITNESS: I called the police to break  
17 up a thing.  
18 HEARING OFFICER JOHNSON: I've got that.  
19 But he has the right to ask you what you  
20 remember about the conversation between Greg and the  
21 police officer.  
22 THE WITNESS: It should never have been.  
23 It was over with.  
24 HEARING OFFICER JOHNSON: So do you

1 Q Someone told you that he had to go --  
2 A He had to go because his head was  
3 bleeding.  
4 Q Did you see him, though?  
5 A Yes, I seen him after he came back.  
6 Q Do you remember how much time passed from  
7 the time the incident happened to when you saw him  
8 next?  
9 A No.  
10 Q Do you know where he went?  
11 A No.  
12 Q Do you know what he was doing up there in  
13 that time?  
14 A No.  
15 Q Do you remember an ambulance coming to  
16 your home that day?  
17 A I don't know. I think somebody had taken  
18 him.  
19 Q Do you remember who took him to the  
20 hospital?  
21 A I don't remember who it was, because I  
22 didn't even know.  
23 Q Do you remember the police coming back to  
24 your house that day?

1 remember Greg saying something about I'm not going  
2 to jail?  
3 THE WITNESS: Freedom of speech. People  
4 say what they want, but them hurting people, that's  
5 a different thing. That's what you're trying to  
6 stop.  
7 HEARING OFFICER JOHNSON: I don't disagree  
8 with you on that. We're trying to figure out what  
9 you remember about what was said.  
10 THE WITNESS: I can't remember too much  
11 because I've been through a lot.  
12 HEARING OFFICER JOHNSON: Okay.  
13 BY MR. FAHY:  
14 Q Did you see Greg after this incident?  
15 After he ran into your apartment, did you see him?  
16 A Not right away, no.  
17 Q How much time passed?  
18 A I couldn't say. I didn't keep no time.  
19 Q Did you see him later that evening or  
20 night?  
21 A I know they say he was hurting and he had  
22 to go to the hospital because he was bleeding, which  
23 I could say that because it's in my doorway, on my  
24 stairway.

1 A No, I don't.  
2 Q Did you or anyone else call for police  
3 service again that evening?  
4 A Not I.  
5 Q Was there another fight that occurred that  
6 day?  
7 A No, not that I know of.  
8 Q On October 7, 2006, this would have been  
9 late, at about 10:58, almost 11:00 o'clock at night,  
10 were you home?  
11 A I suppose so.  
12 Q Do you remember anyone calling the police  
13 from your home at that time?  
14 A No.  
15 Q Do you remember who was home at that time?  
16 A What day are you talking about?  
17 Q It's the same day, but late. It would  
18 have been almost 11:00 o'clock.  
19 A No, I don't know.  
20 Q How about right after midnight?  
21 A At midnight? I might have been asleep.  
22 Q After midnight that night, did you call  
23 the police?  
24 A No.



1 Q Do you know who may have called the police  
2 from your home?  
3 A No.  
4 Q Do you remember family members in front  
5 about to fight just after midnight?  
6 A No.  
7 Q Where did your son Greg go after this  
8 incident?  
9 A They took him to the hospital.  
10 Q I'm sorry. I misspoke. I called him  
11 Greg. I'm sorry.  
12 Where did your son Norman go after this  
13 incident?  
14 A Back upstairs, where I was.  
15 Q Did he remain outside when the other  
16 police officers came?  
17 A No. When they left, he left upstairs with  
18 me.  
19 Q Was he outside when the sergeant was  
20 there?  
21 A I couldn't say. I don't think so. I  
22 don't know.  
23 Q When he went upstairs to your apartment,  
24 did he stay there?

1 (Witness sworn.)  
2 NORMAN MITCHEM,  
3 called as a witness herein, having first been duly  
4 sworn, was examined and testified as follows:  
5 DIRECT EXAMINATION  
6 BY MS. JACKSON:  
7 Q Good afternoon. How are you?  
8 A All right.  
9 Q That's good. Can you please introduce  
10 yourself to the Hearing Officer and spell your last  
11 name.  
12 A I'm Norman Mitchem, M-i-t-c-h-e-m.  
13 Q And, Mr. Mitchem, where do you currently  
14 reside?  
15 A 6408 South Marshfield.  
16 Q And you live in what unit, the top or the  
17 bottom?  
18 A Top.  
19 Q And who lives there with you?  
20 A My mother and my father.  
21 Q And you were residing in that same  
22 location in October of 2006; is that right?  
23 A Yes.  
24 Q I want to draw your attention, Mr. Mitchem

1 A I'm not sure.  
2 Q If I could just ask you this again.  
3 Late that same night, at about 11:00  
4 o'clock, do you recall seeing anyone on the first  
5 floor who was bleeding?  
6 A That night?  
7 Q Yes, late that night.  
8 A No.  
9 Q And you don't know of anyone calling the  
10 police from your home at that time; is that correct?  
11 A That's correct, from what I know of. I  
12 might have been asleep.  
13 MR. FAHY: I have no further questions.  
14 MS. JACKSON: I have nothing. Thank you.  
15 HEARING OFFICER JOHNSON: Thank you for  
16 coming.  
17 We're going to take a break.  
18 (Luncheon recess.)  
19 HEARING OFFICER JOHNSON: We're back on  
20 the record.  
21 Do you want to swear our witness.  
22  
23  
24

1 -- or let me ask you this.  
2 Just for the record, are you sometimes  
3 referred to as Norman Perry, Junior?  
4 A No.  
5 Q It's Norman Mitchem?  
6 A Yes.  
7 Q Your dad, his last name is Perry?  
8 A Yes.  
9 Q So I want to draw your attention to  
10 October 7, 2006.  
11 Were you involved in an altercation with  
12 your cousin Greg on that day?  
13 A Yes.  
14 Q And when did this occur? Do you remember  
15 what time of day?  
16 A 12:00 o'clock.  
17 Q And where were you when this altercation  
18 between you and your cousin occurred?  
19 A Right in front of my house.  
20 Q At some point is it true that Chicago  
21 police officers arrived to the location?  
22 A Yes.  
23 Q Do you remember the officer that arrived  
24 first? Was it a female or a male?

1 A A male and a female.  
2 Q Do you know if they came together?  
3 A I think they came together. I'm not sure.  
4 It's been a while.  
5 Q What happened once the officers arrived?  
6 A We was fighting, and once they arrived, we  
7 stopped fighting.  
8 Q Let me stop you there.  
9 What caused you to stop fighting? Did  
10 either of the officers physically pull you and your  
11 cousin away?  
12 A No.  
13 Q Did either of the officers direct your  
14 cousin and you to stop fighting?  
15 A Yes.  
16 Q Do you recall which officer that was?  
17 A No, I don't.  
18 Q So do you recall where the rest of your  
19 family members were once you and your cousin stopped  
20 fighting?  
21 A On the front porch.  
22 Q Can you explain to the hearing officer who  
23 was on the front porch?  
24 A My Auntie Alice, my father, Norman; and my

1 Q What happened after you and your cousin  
2 stopped fighting? What happened next?  
3 A My cousin was on the porch yelling and  
4 screaming, and the officer ran up there at him.  
5 Q Which officer?  
6 A The male.  
7 Q What happened next?  
8 A He was telling him to kneel down. He  
9 wouldn't kneel down. So he started whacking him  
10 with a black metal pipe, or something, and he was  
11 whacking him on the back of his calf. He wouldn't  
12 go down. He whacked him on his back. He wouldn't  
13 go down. He whacked him on his head.  
14 Q Do you know how many times he hit him with  
15 it?  
16 A I wasn't counting, but it was like he was  
17 continually whacking him.  
18 Q What, if anything, did you hear him say to  
19 your cousin as he was hitting him with it?  
20 A I mean, it's been a while. He was saying,  
21 like, Get down. He wanted him to get down and kneel  
22 on the ground. He refused to do that.  
23 Q Did you observe your cousin say anything  
24 to the officer who was hitting him with the metal

1 mother, Etta.  
2 Q Where were they located on the front  
3 porch?  
4 A On the top stairs of the porch.  
5 Q Where were you?  
6 A On the bottom sidewalk.  
7 Q And where was your cousin, Greg?  
8 A The same place, on the sidewalk.  
9 Q How far away from Greg were you located?  
10 A After we got through fighting, he ran up  
11 on the porch.  
12 Q And when he ran on the porch, where were  
13 you?  
14 A Down at the bottom of the stairs on the  
15 sidewalk.  
16 Q How far away from him were you located?  
17 A Probably, like, 10, 15 feet.  
18 Q At some point were you approached by  
19 either of the police officers?  
20 A Well, yes. They were standing right there  
21 by me.  
22 Q Did you have a conversation with either of  
23 them?  
24 A No, not really.

1 pipe?  
2 A I mean, it's been a while. I can't  
3 remember word for word. I'm pretty sure he said  
4 something to him. They had words exchanged before.  
5 I couldn't tell what you it was. I was mad. I was  
6 heated.  
7 Q And you were mad at who?  
8 A Greg, my cousin.  
9 Q So based off of what you just said, did  
10 the officer walk past you in order to get to Greg?  
11 A Yes.  
12 Q Do you know what caused the officer to  
13 approach Greg?  
14 A No. Greg was screaming, yelling  
15 something, going back and forth. I can't remember  
16 what it was, but he was just yelling something. He  
17 was just angry.  
18 Q Did you hear any profanity from Greg to  
19 the officer?  
20 A I'm pretty sure he yelled something, but I  
21 can't recall what it was. He was cursing. He was  
22 cursing at all of us, me, his mother, the officers.  
23 Q At any time did you see Greg attempt to  
24 strike the officer?



1 A No.

2 Q After the officer struck him with the  
3 metal object, did Greg respond physically?

4 A No. He turned around and ran. He tried  
5 to go into the downstairs apartment. The door was  
6 locked. Then he ran to the upstairs door. It was  
7 unlocked, and he closed the door.

8 Q Did the officer who hit Greg with the  
9 object, did he run after Greg?

10 A After that, no.

11 Q What did you see happen next? Where did  
12 the officer go?

13 A He came back down off the porch. I think  
14 he was talking to the other officer about something,  
15 and I can't really remember. It's been a long time.

16 Q Did other officers respond to the scene?

17 A Well, after everything had happened, there  
18 was other officers that came and pulled up.

19 Q Did you see any superior ranking members,  
20 sergeants?

21 A I don't know.

22 Q Let me ask you this. Did any of the  
23 officers approach you to speak to you about what  
24 occurred?

1 Q Did he try to use an object to fight you  
2 with?

3 A No.

4 Q Did you at any time observe him have an  
5 object in his hand in the situation that happened  
6 with the officer?

7 A No.

8 Q Were you and Greg exchanging punches when  
9 you and he were fighting initially?

10 A It was more like a tussle. We really  
11 didn't punch each other. It was more like I was  
12 just trying to hold him down, because I was on top  
13 of him at first.

14 And then at that time, the police rode up,  
15 and I got up. But, no, we didn't really fight. It  
16 was more like a tussle.

17 Q So is it your testimony that when the  
18 police officers arrived, you and Greg were no longer  
19 in a tussle?

20 A No. Once they came and the officer walked  
21 up, we broke apart.

22 Q Which one walked up?

23 A The lady, the female officer.

24 Q At what point did you see the male officer

1 A I don't remember.

2 Q When the female officer first arrived, did  
3 she speak with you?

4 A Yes. She said something to me, but I  
5 don't remember what it was.

6 Q Outside of that one officer, did anybody  
7 else approach you to talk to you about what  
8 happened?

9 A No.

10 Q Did you witness any injuries from Greg  
11 after the incident with the officer?

12 A Well, I knew he was injured, because there  
13 was blood on the door and hallway leading up the  
14 stairs.

15 Q You saw that?

16 A Yes.

17 Q Where did you go?

18 A After it happened? I left. I didn't stay  
19 around. I left because I didn't want to start  
20 anything with Greg. I didn't know how bad he was  
21 hurt, so after that I left. I wasn't there.

22 Q When you and Greg were fighting, did he at  
23 any time have any objects in his hand?

24 A No.

1 that hit Greg with the object?

2 My question is at what point did you see  
3 him?

4 A It seemed like right after we broke up,  
5 they was both there on the scene at the same time,  
6 like, they were there together.

7 Q Prior to the officer approaching Greg on  
8 the porch, did you hear the officer give any  
9 direction or communicate to either you or to Greg?

10 A No. I can't remember. He was on the  
11 porch, and Greg was yelling, screaming, cussing, and  
12 the officer ran up and tried to get him to kneel  
13 down, and he wouldn't. He started beating him with  
14 whatever that thing was, that pole.

15 Q What color was it?

16 A Black.

17 Q Let me ask you this last question.

18 When the officer approached Greg on the  
19 porch, did he already have the black pole, as you  
20 called it, in his hand?

21 A No. I think that once he got up there, he  
22 ordered him to get down. He wouldn't get down.  
23 Then he pulled it out.

24 MS. JACKSON: I have nothing further for

1 you. Thank you.  
2 **HEARING OFFICER JOHNSON:** Any  
3 cross-examination?  
4 **MR. FAHY:** Thank you.  
5 **CROSS-EXAMINATION**  
6 **BY MR. FAHY:**  
7 Q Mr. Mitchem, you're a convicted felon,  
8 aren't you?  
9 A Yes.  
10 **MS. JACKSON:** Objection. I want to renew  
11 my objection. And I have a standing objection to  
12 any line of questioning.  
13 **HEARING OFFICER JOHNSON:** Okay.  
14 Overruled.  
15 **BY MR. FAHY:**  
16 Q From the time this incident occurred until  
17 today, have you always lived at that home?  
18 A Yes.  
19 Q You haven't moved?  
20 A No.  
21 Q This incident, you testified, occurred at  
22 about noon?  
23 A Yes.  
24 Q And you described it as an altercation,

1 A He was outside, yes.  
2 Q Prior to you going outside, had anything  
3 occurred between the two of you?  
4 A No.  
5 Q So nothing started until you came outside?  
6 A Well, exactly, yes.  
7 Q What was the altercation regarding?  
8 **MS. JACKSON:** Objection, relevance.  
9 **HEARING OFFICER JOHNSON:** Overruled.  
10 **THE WITNESS:** It was a haircut, something  
11 like that, about asking him to cut my hair. And he  
12 was saying I'm talking crazy about something else.  
13 It was about a haircut.  
14 **BY MR. FAHY:**  
15 Q So this altercation between you and your  
16 cousin began over a discussion about your haircut?  
17 A Yes.  
18 Q And it escalated to the point where you  
19 were arguing with each other?  
20 A Yes.  
21 Q What was the argument about?  
22 **MS. JACKSON:** Objection, asked and  
23 answered.  
24 **HEARING OFFICER JOHNSON:** Overruled.

1 correct?  
2 A Yes.  
3 Q Where were you when this altercation  
4 began?  
5 A On the sidewalk in front of my house.  
6 Q Before you got on the sidewalk in front of  
7 your house, where were you at?  
8 A In the house.  
9 Q How long were you on the sidewalk before  
10 the altercation began?  
11 A Probably, like, maybe five, ten minutes.  
12 Q Was Greg outside the entire time that you  
13 were outside?  
14 A Yes.  
15 Q When this altercation began, besides you  
16 and Greg, was anyone outside with you?  
17 A The neighbors was outside.  
18 Q Who were the neighbors?  
19 A Paula across the street, Ms. Thompson, a  
20 couple more people that was out there.  
21 Q And you said you were in your apartment  
22 before you went outside and the altercation began.  
23 Where was Greg? Was he outside when you  
24 got there?

1 **THE WITNESS:** I mean, when I asked him to  
2 cut my hair, he just started talking crazy, cussing  
3 me out.  
4 **BY MR. FAHY:**  
5 Q Have you had altercations with him prior  
6 to this?  
7 A No.  
8 **MS. JACKSON:** Objection, relevance.  
9 **HEARING OFFICER JOHNSON:** Overruled.  
10 **BY MR. FAHY:**  
11 Q So your first altercation with your cousin  
12 was on this day regarding your haircut?  
13 A Yes.  
14 Q And this discussion about your haircut led  
15 to your first physical altercation with your cousin?  
16 **MS. JACKSON:** Objection, asked and  
17 answered.  
18 **HEARING OFFICER JOHNSON:** I got that there  
19 were no prior altercations at all, so sustained.  
20 **BY MR. FAHY:**  
21 Q This discussion about your hair led to a  
22 fight, correct?  
23 A Yes.  
24 Q And that fight occurred in your front



1 yard?  
2 **A On the sidewalk.**  
3 Q On the sidewalk in front of your house?  
4 **A Yes.**  
5 Q He was punching you?  
6 **A No.**  
7 Q Did you punch him?  
8 **A No.**  
9 Q You just wrestled?  
10 **A Wrestled.**  
11 Q Did you go on the ground?  
12 **A Yes.**  
13 Q Were you on the ground punching each other  
14 when the police arrived?  
15 **A No.**  
16 Q You're saying no punches were exchanged?  
17 **A No.**  
18 Q Just a wrestling match over your hair?  
19 **A Yes.**  
20 Q Did any of these other people who were  
21 outside, did they try to stop the fight?  
22 **A No.**  
23 Q Did your parents yell at you to stop  
24 fighting?

1 the police were called, correct?  
2 **A Yes.**  
3 Q When the police arrived, you remember a  
4 male police officer and a female police officer  
5 arriving?  
6 **A Yes.**  
7 Q You think they came together?  
8 **A Yes.**  
9 Q You were still fighting?  
10 **A Yes.**  
11 Q At that time the officers had to separate  
12 the two of you?  
13 **A No.**  
14 Q They never had to physically separate the  
15 two of you?  
16 **A No.**  
17 Q When they said stop fighting, you two  
18 halted?  
19 **A We just stopped.**  
20 Q You just stopped, obeying orders, right?  
21 **A Yes.**  
22 Q After you stopped fighting, you went  
23 toward the porch?  
24 **A No.**

1 **A Yes.**  
2 Q Did you guys stop fighting?  
3 **A No.**  
4 Q You continued to wrestle?  
5 **A Yes.**  
6 Q No punches?  
7 **A No punches.**  
8 Q Did your Aunt Alice, was she yelling at  
9 you guys to stop fighting?  
10 **A Yes.**  
11 Q Did you guys stop fighting when she was  
12 yelling at you to stop fighting?  
13 **A No.**  
14 Q I may not be clear on this, but you're  
15 saying you didn't throw any punches?  
16 **A No.**  
17 Q Did Greg throw any punches?  
18 **A No.**  
19 Q So did anyone try to stop the fight before  
20 the police arrived?  
21 **A Yes.**  
22 Q Who tried to stop it?  
23 **A My auntie, my father. That was it.**  
24 Q So no one was able to stop the fight, so

1 Q Where did you go?  
2 **A I stood right there.**  
3 Q Where did Greg go?  
4 **A On the porch.**  
5 Q So he walked away?  
6 **A He walked away. He walked onto the top of**  
7 **the stairs.**  
8 Q Were the police officers trying to  
9 interview to try to figure out what happened?  
10 **A Well, no.**  
11 Q You didn't speak to any police officer?  
12 **A No.**  
13 Q The entire time that you were outside, did  
14 you ever speak to a police officer?  
15 **A Yes.**  
16 Q Was that a male police officer?  
17 **A A female police officer.**  
18 Q Other than the female police officer, did  
19 you speak to a male police officer?  
20 **A No.**  
21 Q Did you speak to a sergeant?  
22 **A No.**  
23 Q Do you remember a sergeant being on the  
24 scene?



Chicago Police  
Bruce  
Go Police Bo  
ce Askew  
Page 141  
1 porch?  
2 A Yes.  
3 Q And you st  
4 officers?  
5 A

1 A I can't recall. No, I can't recall.  
2 Q Other than the male and female police  
3 officer, do you remember any other police officers  
4 coming to the scene?  
5 A Yes.  
6 Q There were other officers?  
7 A There were other officers.  
8 Q Do you remember how many?  
9 A No.  
10 Q Can you estimate how many?  
11 A No, I can't.  
12 Q Do you remember any other male police  
13 officers coming other than the first male police  
14 officer that came with the female?  
15 A No.  
16 Q Do you remember any other female police  
17 officers coming besides the initial one that came  
18 with the male officer?  
19 A No.  
20 Q When this altercation first began, did  
21 your cousin Greg have a tire iron?  
22 A No.  
23 Q Or a crowbar?  
24 A No.

1 Q He never had one in his possession?  
2 A No.  
3 MS. JACKSON: Asked and answered.  
4 BY MR. FAHY:  
5 Q So if someone called 911 and reported  
6 that, that would be wrong?  
7 A Yes.  
8 Q What was Greg's -- what was his demeanor  
9 during this altercation?  
10 A He was angry. He was mad.  
11 Q About the hair?  
12 A It was about something else before the  
13 hair. I don't know.  
14 Q Well, what was it before the hair that set  
15 him off?  
16 A I don't know.  
17 Q You don't remember?  
18 A I wasn't out there. I don't know. I  
19 wasn't out there before.  
20 Q So he was angry when you first went down  
21 there?  
22 A Yes.  
23 Q And then he got angry at you about your  
24 hair?

1 A Yes.  
2 Q And did he continue to shoot his mouth  
3 off?  
4 A Yes.  
5 Q Was he cursing you?  
6 A Yes.  
7 Q Was he cursing your other family members?  
8 A Yes.  
9 Q Was he cursing his mother?  
10 A Yes.  
11 Q What was he saying to them?  
12 MS. JACKSON: Objection, relevance.  
13 HEARING OFFICER JOHNSON: It's not  
14 relevant really, so overruled.  
15 THE WITNESS: He was just cursing,  
16 yelling. I can't remember exactly what he was  
17 saying. I know it wasn't right.  
18 BY MR. FAHY:  
19 Q You were angry at him still, right?  
20 A Yes.  
21 Q So when you were angry at him, and he was  
22 angry with you, neither one of you threw a punch?  
23 MS. JACKSON: Objection, asked and  
24 answered several times.

1 HEARING OFFICER JOHNSON: Well, the record  
2 is clear there were no punches. Sustained.  
3 BY MR. FAHY:  
4 Q And after the fighting had stopped, Greg  
5 continued mouthing off to everyone?  
6 A Yes.  
7 Q Was he drunk?  
8 A I don't know.  
9 Q Was he high on some type of drugs?  
10 A I don't know.  
11 Q Was that his normal behavior?  
12 A No.  
13 Q The truth is, Mr. Mitchem, when the police  
14 arrived, they had to physically separate Greg from  
15 you; isn't that true?  
16 A No.  
17 Q Isn't it true after they initially  
18 separated you, Greg went back after you and attacked  
19 you?  
20 A No.  
21 Q And got you on the ground?  
22 A No.  
23 Q So you're telling us that after the  
24 wrestling match stopped, Greg walked up onto the

1 porch?

2 A Yes.

3 Q And you stayed down by the police  
4 officers?

5 A Yes.

6 Q But they didn't talk to you?

7 A I can't remember.

8 Q And you didn't talk to them?

9 A No. I mean, no, I can't really remember.

10 Q Do you remember any police officer  
11 ordering Greg to stop and to get on the ground?

12 A Yes.

13 Q Was that the male police officer?

14 A Yes.

15 Q Do you remember your cousin Greg refusing  
16 to obey the officer's commands?

17 A Yes.

18 Q Do you remember your cousin Greg telling  
19 the officer, I'm not going back to jail, or words to  
20 that effect?

21 A I can't recall. I don't know.

22 Q You don't know if he said that?

23 A I can't remember what was said. It's been  
24 so long ago.

1 Q Did you see your mother at this point?

2 A She was standing in the hallway, with the  
3 door open.

4 Q You remember seeing her there?

5 A Yes.

6 Q And you were still by the police officers  
7 in the sidewalk?

8 A Yes.

9 Q By the way, you mentioned it's been so  
10 long.

11 Did you review anything before you  
12 testified here today?

13 A No.

14 Q Did you talk to anyone?

15 A Well, yes.

16 Q Who did you talk to?

17 A My mother and my father.

18 Q And did you talk to Greg also?

19 A Yes.

20 Q And you guys discussed this incident?

21 A No.

22 Q Did you have the statements that OPS  
23 prepared for you in the conference room where you  
24 were sitting?

1 Q I realize that, but I'm asking you do you  
2 remember him saying anything like that, or words to  
3 that effect?

4 MS. JACKSON: Objection, asked and  
5 answered. The witness said he doesn't remember.

6 HEARING OFFICER JOHNSON: He said he does  
7 not recall. Sustained.

8 BY MR. FAHY:

9 Q Is that because it's been so long since it  
10 happened?

11 A Yes.

12 Q Now, you're saying at some point that this  
13 officer just walked up and took out his baton,  
14 correct?

15 A When Greg was on the front -- on the top  
16 stairs of the porch, the officer went up there and  
17 commanded Greg to get on his knees and get down, and  
18 he wouldn't. And he just started whacking him.

19 Q So Greg was on the porch when this  
20 happened?

21 A At this point, he was at the top stairs on  
22 the porch.

23 Q Was he inside the doorway?

24 A No.

1 A Yes. They had a statement. I didn't have  
2 a statement, because mine was recorded.

3 Q Were they reviewing their statements while  
4 you were back there?

5 A Yes.

6 Q Were you guys discussing the incident?

7 A Well, yes, we did.

8 Q And did your mom discuss her testimony  
9 after she testified with you?

10 A No.

11 Q She didn't say anything about it?

12 A No.

13 Q I'm sorry?

14 A No.

15 Q But you all discussed it before the  
16 testimony began, correct?

17 A Yes.

18 Q Part of the reason why you would have done  
19 that is because it's been so long, right?

20 A Yes.

21 Q So collectively you guys tried to refresh  
22 each others' memory, correct, so to speak?

23 A Well, we talk about it all the time  
24 anyway.



1 Q So this is something that you --  
2 MS. JACKSON: Objection, argumentative.  
3 The witness was still speaking.  
4 HEARING OFFICER JOHNSON: I think he said  
5 we talk about this all the time.  
6 Did you have something more to say to  
7 that?  
8 THE WITNESS: Yes. I was about to say  
9 because that was -- it was a crazy day, incident.  
10 It was something we'll never forget.  
11 But I can't tell you word for word what  
12 this person said, that person said, what I said.  
13 BY MR. FAHY:  
14 Q But you have talked about it on several  
15 occasions?  
16 A Yes.  
17 Q Let me ask you this.  
18 Were you ever contacted by OPS to give a  
19 statement?  
20 A Yes.  
21 Q You didn't give a statement to OPS until  
22 November 18, 2009; isn't that true?  
23 A Yes.  
24 Q That was more than three years after the

1 incident, correct?  
2 A Yes.  
3 Q During those three years, you were still  
4 around, right?  
5 A Yes.  
6 Q You were still living in the same home?  
7 A Yes.  
8 Q You weren't being uncooperative or  
9 anything, were you?  
10 MS. JACKSON: Objection, relevance.  
11 We stipulate that's when he gave a  
12 statement to OPS.  
13 HEARING OFFICER JOHNSON: The objection is  
14 overruled.  
15 MS. JACKSON: Well, then my objection is  
16 form of the question, lacks foundation.  
17 This witness would not know how many times  
18 there were attempts made --  
19 HEARING OFFICER JOHNSON: His only  
20 question was were you being cooperative, and he  
21 said, yes.  
22 MS. JACKSON: But the inference is that he  
23 wasn't, as if to impute knowledge of when the  
24 investigator would have contacted him.

1 HEARING OFFICER JOHNSON: I didn't take it  
2 that way.  
3 I just took it that he lived at the same  
4 place. It took them three years to get a statement.  
5 MR. FAHY: That's exactly what I'm trying  
6 to establish.  
7 BY MR. FAHY:  
8 Q And, obviously, before you gave any  
9 statement to OPS, you and your family members had  
10 discussed this incident, correct?  
11 A Could you repeat that?  
12 Q When you gave the statement to OPS three  
13 years after of the incident, obviously, you had  
14 discussed the incident, as you said, with your  
15 family members, correct?  
16 A Yes.  
17 Q And you discussed it prior to going in  
18 there and giving your statement, correct?  
19 A Are you talking about --  
20 MS. JACKSON: Objection. What's the  
21 relevance?  
22 HEARING OFFICER JOHNSON: The objection is  
23 overruled, because I think, first of all, the delay  
24 in the case has an effect on the case, and I think

1 that's being explored. And I think that's fair  
2 game.  
3 And so including whether because of the  
4 long delay people had a chance to talk with each  
5 other and what the effect of that is on his  
6 testimony and what the effect is on the statement,  
7 those are all relevant.  
8 Quite frankly, this is a case where the  
9 passage of time has created problems here, big  
10 problems.  
11 MS. JACKSON: And the appropriate person  
12 is the IPRA investigator.  
13 This witness knows nothing about the  
14 rationale or reason for why he didn't come in until  
15 November of '09.  
16 HEARING OFFICER JOHNSON: He's not being  
17 asked about that either.  
18 All he's being asked about is what he did  
19 and when people talked to him. That's all. So  
20 overruled.  
21 MR. FAHY: I believe he answered the  
22 question, but maybe I didn't hear it.  
23 BY MR. FAHY:  
24 Q Before you went down and gave your

1 statement to OPS, obviously, you had talked to your  
2 family members about this incident, correct?

3 A Yes.

4 Q And you talked to them about what happened  
5 on that particular day?

6 A Yes.

7 Q Now, you testified that when the officer,  
8 this male officer, approached your cousin, your  
9 cousin was at the top of the porch?

10 A Yes.

11 Q And where was the officer? Was he on the  
12 steps leading up to the porch?

13 A Yes.

14 Q And was he facing your cousin at that  
15 time, when he had the baton out? Was that your  
16 testimony?

17 A Yes.

18 Q How many steps below your cousin was the  
19 officer?

20 A He was on the top landing with my cousin.

21 Q But they were facing each other?

22 A They were facing each other.

23 Q And you're saying at that point is where  
24 the officer struck him in the leg?

1 MR. FAHY: I asked him if he was facing  
2 him. He said they were facing one another.

3 HEARING OFFICER JOHNSON: I think you were  
4 saying something else, though.

5 THE WITNESS: They was facing each other.

6 (Indicating) He started whacking on him,  
7 from -- to his leg, like, Greg facing him, and  
8 hitting him on the back of his calf like that.

9 At one point the officer went to the side  
10 and whacked him on the back and then in the back of  
11 his head. He turned around and ran into the house.

12 MS. JACKSON: And, for the record, I would  
13 just like for the record to note the witness is  
14 moving his hand when he's saying he was whacking  
15 him.

16 HEARING OFFICER JOHNSON: Right. We have  
17 the video, which hopefully picked that up.

18 BY MR. FAHY:

19 Q And you're saying that the officer was  
20 hitting him with a large metal club or baton?

21 A Yes.

22 Q And his first strikes were down at his  
23 calf?

24 A Yes.

1 A Yes.

2 Q How many times did you see the officer  
3 strike your cousin?

4 A He struck him on his calf. He struck him  
5 on his back, and he struck him on his head.

6 Q Can you demonstrate how he did that?

7 A I mean --

8 Q Well, during all the times you saw this  
9 officer supposedly striking your cousin, did your  
10 cousin go down?

11 A No.

12 Q Were they facing each other the entire  
13 time?

14 A Until he turned around and ran in the  
15 house.

16 Q But for all these strikes, were they  
17 facing each other?

18 A Greg was facing him and --

19 Q And then after the strikes --

20 MS. JACKSON: Objection, argumentative.  
21 The witness was not finished answering the  
22 question.

23 HEARING OFFICER JOHNSON: Yes. Fair  
24 enough.

1 Q And they were facing each other on the  
2 same landing?

3 A Yes.

4 Q So the officer bent down to hit him?

5 A Yes. Greg had his hands behind his head  
6 like so, like this, and he was telling him to kneel  
7 down. He wouldn't kneel down.

8 He was whacking him. He wouldn't go down.  
9 He whacked him some more. He wouldn't go down. He  
10 whacked him in the head. He ran in the house.

11 Q When he whacked him in the head, they were  
12 facing each other?

13 A He was going around him. He started  
14 whacking him from the front. And then he bent down,  
15 whacking him good. I guess he was facing him.

16 Q And when he was whacking him, you're  
17 saying that Greg had his hands behind his head?

18 A Yes.

19 Q Just like I'm demonstrating now and you  
20 demonstrated earlier?

21 A Yes.

22 Q Covering the back of his head?

23 A Yes.

24 Q And his hands remained there during all



1 these strikes?  
2 **A Well, not the entire time, because I guess**  
3 **Greg --**  
4 **Q I'm not asking what you guess. I'm asking**  
5 **what you saw.**  
6 **A Well, he was about to submit. His hands**  
7 **was like this, and eventually they came to rest on**  
8 **his head.**  
9 **Q Were they resting on his head?**  
10 **A Yes.**  
11 **Q On the back of his head?**  
12 **A The top, I guess. I can't really**  
13 **remember.**  
14 **Q So you can't remember?**  
15 **A If it was on the top of his head, the back**  
16 **of his head, I saw them.**  
17 **Q Can you demonstrate how you remember**  
18 **seeing his hands?**  
19 **A (Indicating) He had his hands up like**  
20 **this. And he was trying to get him to submit. The**  
21 **officer was trying to get him to submit. He was**  
22 **whacking on him. And I guess, you know, he ended up**  
23 **like this until he started hitting him in the head.**  
24 **Well, if he took it in the head, then he**

1 was struck, he was able to turn and just run into  
2 the house, correct?  
3 **A Yes.**  
4 **Q And run up the stairs, which would have**  
5 **been to your apartment?**  
6 **A Yes.**  
7 **Q Did you run up the stairs?**  
8 **A No.**  
9 **Q Did you stay outside?**  
10 **A Until the front door was open again.**  
11 **Q So you remained on the scene, right?**  
12 **A Yes.**  
13 **Q And you spoke with the police officers**  
14 **about what had happened?**  
15 **A I can't remember, but it happened. Yes, I**  
16 **spoke. I think I spoke to them.**  
17 **Q And was one of the police officers that**  
18 **you spoke to the male police officer?**  
19 **A I think it was the female officer.**  
20 **Q Did you give her your information?**  
21 **A I can't remember.**  
22 **Q Did you give her your name?**  
23 **A I'm pretty sure. I can't remember.**  
24 **Q Did you give the female officer your age?**

1 **covered his head like this and then ran. I mean, I**  
2 **can't really remember.**  
3 **Q So you're saying that at some point he**  
4 **kept them up there while he was getting hit with the**  
5 **baton, but then removed them temporarily and got hit**  
6 **in the head?**  
7 **A No. I'm saying I can't remember exactly**  
8 **how it went, but I can remember him having his hands**  
9 **on top of his head. Maybe he hit him in his head,**  
10 **and he covered up. I don't know.**  
11 **Q Are you telling us that Greg was**  
12 **cooperative with the police officer?**  
13 **A No, he wasn't. He didn't kneel down. He**  
14 **wasn't going to kneel down because he was getting**  
15 **beat with a pole. I would have ran, too.**  
16 **Q And the officer was hitting him with full**  
17 **force?**  
18 **MS. JACKSON: Objection. Now, that's**  
19 **speculation.**  
20 **How would he know what his force is?**  
21 **HEARING OFFICER JOHNSON: Yes. Sustained**  
22 **to that question.**  
23 **BY MR. FAHY:**  
24 **Q Well, regardless, after the last time he**

1 **A I can't remember.**  
2 **Q Did you give the female or any other**  
3 **officer your home phone number?**  
4 **A I can't remember.**  
5 **Q Did you give any of the officers a**  
6 **business phone number or a second phone number?**  
7 **A I can't remember.**  
8 **Q And you had some injuries to you as a**  
9 **result of this incident, correct?**  
10 **A No.**  
11 **Q Didn't they offer you medical attention or**  
12 **ask you if you needed any medical attention?**  
13 **A No.**  
14 **Q You had no injuries at all?**  
15 **A No.**  
16 **Q Did they also speak to you about -- give**  
17 **you some domestic violence information?**  
18 **A No.**  
19 **Q After Greg went up the stairs into your**  
20 **apartment, did you see him again while the police**  
21 **officers were there?**  
22 **A No.**  
23 **Q When was the next time that you saw your**  
24 **cousin, Greg?**



Page 161

1 A I don't remember.  
2 Q Did you see him again that day?  
3 A No.  
4 Q Besides yourself, you had other family  
5 members who were still outside in front after this  
6 incident, correct, or do you remember?  
7 A Yes.  
8 Q Your father was out there?  
9 A Yes.  
10 Q Was your Aunt Alice out there?  
11 A Yes.  
12 Q And was your mother, Etta, out there?  
13 A Yes.  
14 Q And while they were out there, is that  
15 when other police officers arrived?  
16 A Yes.  
17 Q And your family members spoke with those  
18 police officers?  
19 A I don't know.  
20 Q You don't know?  
21 A No.  
22 Q Did you see them conversing with the  
23 police officers?  
24 A No. I left.

Page 162

1 Q You left. Where did you go?  
2 MS. JACKSON: Objection, relevance.  
3 HEARING OFFICER JOHNSON: Overruled.  
4 THE WITNESS: One of my friends. So to  
5 stop the fighting, if he was still mad, I left so  
6 there wouldn't be another altercation.  
7 BY MR. FAHY:  
8 Q When you left, did you go back inside your  
9 apartment first, or did you just leave from the  
10 front of the house?  
11 MS. JACKSON: Objection.  
12 HEARING OFFICER JOHNSON: Overruled.  
13 THE WITNESS: I went back in.  
14 BY MR. FAHY:  
15 Q Was that after the police had left?  
16 A Before they left.  
17 Q Before they left?  
18 A Yes.  
19 Q So how much time from the time that Greg  
20 ran up the stairs into your apartment to the time  
21 that you went to the apartment, how much time  
22 passed?  
23 A I can't remember, but it wasn't that long,  
24 like, five minutes. I'm not sure.

Page 163

1 Q So after you were done speaking with the  
2 police, you went into your home?  
3 MS. JACKSON: Objection, mischaracterizes  
4 his testimony.  
5 HEARING OFFICER JOHNSON: Sustained.  
6 BY MR. FAHY:  
7 Q Well, had you spoken to the police and  
8 then you went into the home?  
9 MS. JACKSON: Objection.  
10 HEARING OFFICER JOHNSON: No. That's a  
11 fair question.  
12 MS. JACKSON: He already said he didn't.  
13 It's been asked and answered.  
14 HEARING OFFICER JOHNSON: Actually not.  
15 That's not correct. So overruled.  
16 THE WITNESS: Can you repeat the question  
17 again?  
18 BY MR. FAHY:  
19 Q From the time Greg ran until the time you  
20 went back into your apartment, had you spoken to the  
21 police during that time?  
22 A Yes.  
23 Q How long were you in your apartment?  
24 A I'm not sure. It was a long time ago.

Page 164

1 Q Do you have any idea how long you stayed  
2 there?  
3 A Not very long. I left right out.  
4 Q Did you see Greg when you left?  
5 A No.  
6 Q But you didn't see Greg that day again,  
7 correct?  
8 A No.  
9 MR. FAHY: I have no further questions.  
10 REDIRECT EXAMINATION  
11 BY MS. JACKSON:  
12 Q Mr. Mitchem, you said you did speak to the  
13 police after Greg ran, and you stayed in the front  
14 for about five minutes. That was your testimony,  
15 right?  
16 A Yes.  
17 Q Was this the female officer who initially  
18 arrived at the beginning of the incident?  
19 A Yes.  
20 Q Was this a regular officer in a blue  
21 shirt, the female?  
22 A I don't remember.  
23 Q Do you remember ever at any time during  
24 this situation talk to a superior officer in a white

1 shirt?

2 A No.

3 Q Do you remember, or you didn't, which one?

4 A I didn't talk to a white shirt at all.

5 Q Did you ever see one, do you recall?

6 A No, I can't remember.

7 Q Now, isn't it true that you never told OPS  
8 that your cousin had a crowbar or a tire iron?

9 MR. FAHY: Objection.

10 THE WITNESS: No, I never.

11 MR. FAHY: Form of the question.

12 HEARING OFFICER JOHNSON: That would be  
13 sustained to what he told OPS, unless we're trying  
14 to impeach him. So it's sustained to the form the  
15 question.

16 BY MS. JACKSON:

17 Q At any time did you complain that your  
18 cousin had a crowbar or any type of weapon when you  
19 were tussling?

20 MR. FAHY: Objection.

21 HEARING OFFICER JOHNSON: Sustained to  
22 that.

23 BY MS. JACKSON:

24 Q Did your cousin have a weapon at any

1 A No.

2 Q And you said there were other officers out  
3 there. Did anybody try to approach the house to  
4 pursue Greg? Did you observe any of that?

5 A No.

6 Q Now, you were asked questions about  
7 communicating with your family regarding what  
8 occurred prior to you testifying here today.

9 Did you and your family communicate in  
10 order to decide how you were going to tell the story  
11 today?

12 MR. FAHY: Objection.

13 HEARING OFFICER JOHNSON: Overruled.

14 THE WITNESS: No.

15 BY MS. JACKSON:

16 Q What was the purpose, as you understand  
17 it, to be for you chatting or discussing or  
18 communicating what occurred on that day with your  
19 family?

20 MR. FAHY: Objection.

21 MS. JACKSON: I believe the witness should  
22 be entitled to explain it.

23 MR. FAHY: At which time? He's saying he  
24 spoke to them all the time.

1 point?

2 A No.

3 Q Did he ever have a weapon at any point you  
4 saw him outside on October 7, 2006?

5 A No.

6 Q You said that your family tried to stop  
7 it, right?

8 A Yes.

9 Q And when you say that, do you mean if  
10 anybody physically intervened?

11 A No.

12 Q When you say they tried to stop it, are  
13 you speaking about them yelling at you to stop?

14 A Yes.

15 Q And your testimony is that, in fact, you  
16 and your cousin did stop after the female officer  
17 arrived; is that correct?

18 A Yes.

19 Q To the best of your knowledge this was a  
20 blue shirt; is that correct?

21 A Yes.

22 Q Did you ever hear the officer who hit Greg  
23 with the baton tell him that he was under arrest or  
24 going to be under arrest, anything to that effect?

1 HEARING OFFICER JOHNSON: I suppose it  
2 would be between 2006 and 2009, or just when he's  
3 out here?

4 BY MS. JACKSON:

5 Q Between 2006 and 2009 when -- strike that.

6 Between the incident, when it occurred on  
7 October 7, 2006, until you gave your testimony in  
8 November of 2009, you told Respondent's counsel that  
9 you had communicated with your family about what  
10 happened on that day, right?

11 A Yes.

12 Q Can you explain to the Hearing Officer  
13 what was the purpose in your mind of that  
14 communication?

15 A Just, you know, talking about the  
16 incident, what happened, that it was crazy, that it  
17 shouldn't have went that far. That was basically  
18 it, just conversation.

19 MR. FAHY: I'm going to object. It's not  
20 relevant as to what he thinks the purpose of it was.

21 MS. JACKSON: Well, if he's engaging the  
22 Members of the Board, and it was allowed over my  
23 objection in terms of the timeliness issue of this  
24 case, then the Members of the Board need to know



1 what his intent was, because they're the arbiters of  
2 credibility.

3 So was he talking in order to corroborate  
4 some story here today? Was he talking because it  
5 was a large event of his life?

6 The reason is important if you're going a  
7 assess his credibility off that line of questioning.

8 **HEARING OFFICER JOHNSON:** I'm going to let  
9 his answer stand, but I don't think the argument  
10 that's going to be made has to do with purpose.

11 **MS. JACKSON:** Separate and apart from that  
12 argument --

13 **HEARING OFFICER JOHNSON:** I'm going to let  
14 his answer stand.

15 **MS. JACKSON:** In terms of that, the  
16 argument is it's been a long time. They can't  
17 remember.

18 But separate and apart from that is the  
19 credibility judgment about why -- about the fact  
20 that he was discussing it prior to being here, and I  
21 want the Board to rest assured that it wasn't talk  
22 as if they were corroborating or in cahoots about  
23 what they say here today.

24 The lack of memory is separate, but the

1 that's for argument later.

2 **MS. JACKSON:** I have nothing further for  
3 you.

4 **HEARING OFFICER JOHNSON:** Recross?

5 **MR. FAHY:** No further questions.

6 **HEARING OFFICER JOHNSON:** Thank you for  
7 coming down. As this witness leaves, I want to stay  
8 on the record for a second.

9 I think it is a problem when -- and I'm  
10 sure we're going to have this discussion later. It  
11 is a problem where in a case like this which has a  
12 discrete number of easily locateable eyewitnesses  
13 where you wait three years to bring somebody in to  
14 give a statement who is not just an eyewitness but  
15 one of the two initial combatants, and then you ask  
16 that person who is in his own mind trying to --  
17 let's assume he's doing the very best he can to tell  
18 what happened.

19 It's almost invariably true that before  
20 that person gives a statement, he's going to go and  
21 try to remember by talking to other people who were  
22 there, and then the question is are you really  
23 getting what his memory is, or are you getting what  
24 other people's memory are.

1 reason they discussed it is important in terms of  
2 their testimony here today to the best of their  
3 ability.

4 **MR. FAHY:** The problem with having these  
5 talking objections is she's laying out the answer  
6 for the witness with the witness right here.

7 **HEARING OFFICER JOHNSON:** I understand.

8 **MR. FAHY:** And that's the problem.

9 **HEARING OFFICER JOHNSON:** That is a  
10 problem.

11 I let his answer stand. Now you're  
12 arguing to me why I should do what, let his answer  
13 stand?

14 **MS. JACKSON:** Because the commentary  
15 that's on the record, I want the Board Members to  
16 know that it was the reason that you --

17 **HEARING OFFICER JOHNSON:** But that's  
18 argument for later. Right now we have a witness on  
19 the stand.

20 **MS. JACKSON:** I don't have any further  
21 questions on this, but the comment was on the  
22 record, and I wanted the Board to know why I even  
23 asked the question.

24 **HEARING OFFICER JOHNSON:** Okay. But

1 And I think the problem -- and it's not  
2 your fault. I mean, you had nothing to do with it.

3 But this is a troubling case, that  
4 people's memories are so foggy, because it happened  
5 so long ago, and then even the follow up  
6 investigation was delayed. I mean, I assume that's  
7 the argument you are making.

8 **MR. FAHY:** That's exactly the argument.

9 **HEARING OFFICER JOHNSON:** Is why would you  
10 wait three years to bring this person in who was in  
11 the middle of it? I mean, I don't even get that.

12 Maybe there's some explanation, but I  
13 think that's where the line of questioning was  
14 going. It didn't have to do with his intent or  
15 purpose. He could have been the most God fearing  
16 honest witness in the world. At three years later,  
17 there's going to be problems so anyway.

18 So, anyway, why don't we get our last  
19 witness in.

1 (Witness sworn.)  
2 GREG LARKINS,  
3 called as a witness herein, having first been duly  
4 sworn, was examined and testified as follows:  
5 **DIRECT EXAMINATION**  
6 **BY MS. JACKSON:**  
7 Q Good afternoon.  
8 A Good afternoon.  
9 Q Can you please state your name and  
10 introduce yourself to the Hearing Officer.  
11 A Greg Larkins.  
12 Q Mr. Larkins, where do you live?  
13 A 6408 South Marshfield.  
14 Q And who do you live there with?  
15 A My mother.  
16 Q And you're at the top or bottom unit?  
17 A The first floor.  
18 Q And you were living there October 7, 2006;  
19 is that right?  
20 A Yes, ma'am.  
21 Q You were in an altercation with your  
22 cousin on that day; is that correct?  
23 A Yes, ma'am.  
24 Q And eventually you and your cousin began

1 just testify. The objection is to leading.  
2 **HEARING OFFICER JOHNSON:** Try to let him  
3 tell his story.  
4 **BY MS. JACKSON:**  
5 Q Do you recall what officer arrived to your  
6 location during the altercation with your cousin?  
7 A This gentleman here, and a female officer.  
8 **MS. JACKSON:** And let the record reflect  
9 he's identifying the Respondent.  
10 **HEARING OFFICER JOHNSON:** The record will  
11 reflect that identification.  
12 **BY MS. JACKSON:**  
13 Q Do you recall who arrived first, or if  
14 they came together?  
15 A I think they came together.  
16 Q What were you doing when they arrived?  
17 A I was standing on the porch.  
18 Q What happened next after they arrived?  
19 A I was talking.  
20 Q Who were you talking to?  
21 A I was just talking.  
22 Q What were you saying?  
23 A I can't remember what I was saying at the  
24 time. I remember I was talking.

1 fighting; is that correct?  
2 A Yes, ma'am.  
3 Q And police officers arrived at your home?  
4 A Yes.  
5 Q About what time of the day did this occur,  
6 do you remember?  
7 A Around 12:00.  
8 Q When you and your cousin were fighting,  
9 did you all exchange any punches?  
10 A No. We were more wrestling.  
11 Q Did you sustain any injuries from the  
12 fight with your cousin?  
13 A No.  
14 Q At any point in that incident with your  
15 cousin, did you have an instrument that you used to  
16 fight with him?  
17 A No.  
18 Q At any point prior to the police arriving,  
19 did you pick up any type of instrument?  
20 A No.  
21 Q After the police arrived, did you at any  
22 point pick up an instrument?  
23 A No.  
24 **MR. FAHY:** Objection. The witness could

1 Q Were you angry when the police officers  
2 arrived?  
3 A Yes.  
4 Q What were you angry about?  
5 A Me and my cousin just got finished  
6 wrestling.  
7 Q Did the police officers have to separate  
8 you and your cousin?  
9 A No.  
10 Q Why did you stop fighting your cousin?  
11 A Because the police had arrived.  
12 Q Did either of the officers, the female or  
13 the male, instruct you to stop?  
14 A No.  
15 Q Where did your cousin go after you all  
16 stopped fighting?  
17 A I think he was on the front porch down  
18 farther. We got two levels.  
19 Q Two levels?  
20 A Yes, one coming into the door. Then  
21 there's another landing.  
22 Q Where was your mother?  
23 A She was right beside me.  
24 Q And was any other family members outside?



1 A My auntie and my uncle.  
2 Q Where were they located?  
3 A On the other side of me.  
4 Q And where was that in relation to, let's  
5 say, the porch?  
6 A By the banister. On my left side, by the  
7 banister.  
8 Q And where was Greg?  
9 A I'm Greg.  
10 Q I'm sorry. Where was Norman?  
11 A Norman, I believe, was down on the other  
12 landing.  
13 Q How far away from you?  
14 A About 15 feet.  
15 Q So what happened once the police officers  
16 arrived and you stopped fighting? You said you went  
17 to the landing, I believe?  
18 A I was on the front porch.  
19 Q What happened after that?  
20 A The officer came up. He said some words  
21 to me. He struck me upside my head and my leg.  
22 Q What did he say?  
23 A Get down.  
24 Q What did you say?

1 physically respond to the officer?  
2 A No. I tried to get away.  
3 Q What did you do?  
4 A I went up to my auntie's house. I ran up  
5 the stairs.  
6 Q Then what happened?  
7 A I ran out the back and went over to a  
8 friend's house. That was it.  
9 Q Did you sustain any injuries?  
10 A Yes.  
11 Q What injuries?  
12 A A swollen leg, and I think about 12  
13 staples to my head.  
14 Q When did you receive treatment?  
15 A Later on that day.  
16 Q Do you recall what time it was?  
17 A About 7:00 o'clock.  
18 Q Where did you receive treatment?  
19 A Holy Cross.  
20 Q How did you get there?  
21 A My cousin took me.  
22 Q Why didn't you go immediately after the  
23 incident?  
24 A Because I didn't think it was that bad.

1 A I said, I didn't do nothing.  
2 Q Did he respond after you said you didn't  
3 do anything?  
4 A Yes. He hit me.  
5 Q Did he say anything verbally before he hit  
6 you?  
7 A No.  
8 Q Did he tell you that he wanted to arrest  
9 you?  
10 A No.  
11 Q Where did he hit you?  
12 A He hit me on my leg at first, then on my  
13 head.  
14 Q And then how many times did he hit you?  
15 A I couldn't count.  
16 Q Did he hit you with his hand? What did he  
17 hit you with?  
18 A (Indicating) No, a long stick with a ball  
19 on the end.  
20 Q You're doing like this (indicating).  
21 A It retracts.  
22 Q What color was it?  
23 A Black.  
24 Q After he hit you, did you try to

1 Q What changed your mind?  
2 A When the pain hit me, it just got too much  
3 to where I couldn't stand it no more.  
4 Q What kind of pain did you experience?  
5 A A headache. My head was hurting. I  
6 couldn't move my leg.  
7 Q Who took you to the hospital?  
8 A My cousin.  
9 Q What's your cousin's name?  
10 A Steve Mitchem.  
11 Q You said you went to a friend's; is that  
12 correct?  
13 A Yes.  
14 Q How did you exit the house? Did you leave  
15 from the --  
16 A Through the back gate.  
17 Q Were any officers, to your knowledge,  
18 chasing you or pursuing you?  
19 A No.  
20 Q At any point did you go toward the front  
21 of the home again?  
22 A No.  
23 Q Were you given medication for your  
24 injuries after you left the hospital?



1 A Yes.  
2 Q Do you recall how long you had to stay on  
3 the medication?  
4 A I can't recall.  
5 Q How long did it take the staples to heal?  
6 A About a week.  
7 Q At any point after you and Norman  
8 separated, did you threaten to go after Norman  
9 again?  
10 A No.  
11 Q Did you attempt to pursue him again,  
12 Norman?  
13 A No.  
14 Q Did you tell any of the officers that you  
15 were going to start to fight again once they left?  
16 A No.  
17 Q Was the officer who hit you with the  
18 baton, when he was on the scene, at any point did  
19 you threaten Norman?  
20 A No.  
21 Q Did the officer who hit you with the  
22 baton, did he instruct you to stop talking or ask  
23 you to be quiet?  
24 A Yes.

1 Q What was your response?  
2 A I could talk.  
3 Q Did you direct any profanity at the  
4 officers who hit you at the time?  
5 A No.  
6 Q While you were being hit with the baton,  
7 did the officer say anything to you?  
8 A When he struck me, he told me to get down.  
9 Q Your response was?  
10 A I didn't do nothing.  
11 Q You never did get down, right?  
12 A No.  
13 Q At any point, did you hit the officer as  
14 he was hitting you with the baton?  
15 A No.  
16 Q Did you threaten him?  
17 A No.  
18 Q Did the officer threaten you in any way  
19 verbally, the one that hit you with the baton?  
20 A No.  
21 Q Did other officers, aside from the female  
22 and the officer who hit you with the baton, did  
23 other officers respond to the scene of your home?  
24 A No.

1 Q You don't remember seeing any of the other  
2 officers?  
3 A No.  
4 Q A white shirt didn't respond?  
5 A No. When I saw a white shirt, it was at  
6 the hospital.  
7 Q Can you tell us what happened then?  
8 A I was laying in the bed, and the officer  
9 came in and said he heard one of my officers  
10 struck --  
11 MR. FAHY: Objection, hearsay.  
12 HEARING OFFICER JOHNSON: Well, right.  
13 It's --  
14 MS. JACKSON: It's not being admitted for  
15 the truth of the matter asserted. I would like to  
16 know his response to what was said to him.  
17 HEARING OFFICER JOHNSON: Right.  
18 Well, maybe you could just ask what you  
19 told the sergeant in the hospital.  
20 THE WITNESS: One of his officers hit me.  
21 BY MS. JACKSON:  
22 Q And did you also say that to the triage  
23 nurse when you first arrived?  
24 A Yes, ma'am.

1 Q And you said that again to the white shirt  
2 who arrived?  
3 A Yes.  
4 MR. FAHY: Objection.  
5 HEARING OFFICER JOHNSON: Yes, sustained.  
6 First of all, we already have that.  
7 MS. JACKSON: So his answer is going to  
8 stand?  
9 HEARING OFFICER JOHNSON: No. The  
10 objection is sustained. His first answer will  
11 stand.  
12 MS. JACKSON: Okay.  
13 BY MS. JACKSON:  
14 Q So what occurred after that, after that  
15 white shirt arrived?  
16 A He asked me why I wasn't arrested.  
17 MR. FAHY: Objection.  
18 HEARING OFFICER JOHNSON: Sustained.  
19 MR. FAHY: The sergeant asking him why he  
20 wasn't arrested isn't relevant for this hearing.  
21 It's hearsay.  
22 HEARING OFFICER JOHNSON: Right. It's  
23 sustained.  
24 MS. JACKSON: I asked him what happened.

1 I didn't know that was going to be his answer.

2 I'll withdraw the question.

3 **HEARING OFFICER JOHNSON:** Okay.

4 **BY MS. JACKSON:**

5 Q Without telling us what the officer said  
6 to you, what occurred after that?

7 **A Nothing. They treated my wound and**  
8 **released me.**

9 Q Did you give your contact information,  
10 your name and your address, to that officer?

11 **A Yes, ma'am.**

12 Q And at some point did an individual from  
13 the Chicago Police Department or related to the  
14 Chicago Police Department contact you?

15 **A Yes, ma'am.**

16 Q And do you recall how long after the  
17 incident in question did that contact occur?

18 **A I think two or three days.**

19 Q And eventually do you recall someone  
20 taking pictures of you?

21 **A Yes.**

22 Q Do you recall how long after the incident  
23 that occurred?

24 **A I came home. My mother took pictures of**

1 you stood in front of a judge and admitted to being  
2 a thief?

3 **MS. JACKSON:** I just want to put my  
4 objection on the record that I articulated earlier.

5 **HEARING OFFICER JOHNSON:** Yes. And  
6 overruled.

7 **THE WITNESS:** I think once.

8 **BY MR. FAHY:**

9 Q Would that have been on October 3, 2007,  
10 in front of Judge O'Malley in Branch 29?

11 **A Yes, in Will County.**

12 Q No, I'm not talking about the one in Will  
13 County. I'm talking about Branch 29 on the north  
14 side of the city.

15 Do you remember standing in front of Judge  
16 O'Malley and admitting to him that you are a thief  
17 on October 3, 2007?

18 **A If you say so.**

19 Q Well, let me ask this. Do you also  
20 remember standing in front of another judge in the  
21 southwest suburbs, in Bridgeview, not Will County,  
22 in Bridgeview, a Judge O'Malley out there, same  
23 name, different judge, on June 17, 2003? Do you  
24 remember standing in front of that judge and

1 **me.**

2 Q Did anybody else from, perhaps, the City  
3 of Chicago take pictures?

4 **A Yes.**

5 Q Do you remember how long after the  
6 incident that occurred?

7 **A Like, two, three days.**

8 Q Do you remember where you were when those  
9 pictures were taken?

10 **A I think I was on 35th.**

11 Q What location on 35th?

12 **A I think Michigan -- not Michigan.**

13 Q Was it a City facility?

14 **A I believe so.**

15 **MS. JACKSON:** I have no further questions  
16 for you. Thank you.

17 **HEARING OFFICER JOHNSON:** Any  
18 cross-examination?

19 **CROSS-EXAMINATION**

20 **BY MR. FAHY:**

21 Q Mr. Larkins, as you sit here today, you're  
22 a convicted thief, right?

23 **A Yes.**

24 Q How many times in the last ten years have

1 admitting that you were a thief?

2 **A I don't remember.**

3 Q You don't remember. Okay.

4 That's not something that's a memorable  
5 incident for you, to stand in front of a judge and  
6 admit that you are a thief?

7 **A No.**

8 Q It kind of makes you chuckle, doesn't it?

9 **A Yes.**

10 Q Are you an alcoholic?

11 **A No.**

12 Q Were you an alcoholic in October of 2006?

13 **A No.**

14 **MS. JACKSON:** Objection. Was he drinking  
15 on that day is different than are you an alcoholic.

16 **HEARING OFFICER JOHNSON:** Sustained.

17 **BY MR. FAHY:**

18 Q Were you abusing alcohol on that day?

19 **A No.**

20 Q When you went to Holy Cross Hospital, did  
21 you tell the triage nurse that you abuse alcohol?

22 **A No.**

23 Q You never said such a thing?

24 **A No.**



1 Q You testified that your cousin, Steve  
2 Mitchem, took you to Holy Cross Hospital that night?  
3 A Yes.  
4 Q That was some hours after this incident,  
5 correct?  
6 A Yes.  
7 Q So you never got into an ambulance at 8:20  
8 that night on October 7th?  
9 A No.  
10 Q Do you remember an ambulance being at your  
11 home that night?  
12 A No.  
13 Q Is there another person by the name of  
14 Greg Larkins who lives at your home?  
15 A No.  
16 Q Is your date of birth July 9, 1972?  
17 A No.  
18 Q That's not your date of birth?  
19 A No.  
20 Q Is your Social Security number  
21 350-60-8756?  
22 A Yes, sir.  
23 Q That's your Social Security number?  
24 A Yes.

1 Q You sat here today and identified and  
2 pointed to my client, Officer Askew, correct?  
3 A Yes.  
4 Q In the five and a half years since this  
5 incident, have you ever identified Officer Askew as  
6 the person who hit you with the baton?  
7 A No.  
8 Q The first time you ever told anyone that  
9 it was Officer Askew that hit you with a baton was  
10 here today, correct?  
11 A Yes.  
12 Q Do you remember shortly after this  
13 incident when you were interviewed by OPS on  
14 October 16, 2006? Do you remember being interviewed  
15 on that day?  
16 A Yes.  
17 Q Do you remember telling that investigator  
18 that you don't know if you could recognize the  
19 officer as you were -- do you remember telling the  
20 investigator that you didn't know if you could  
21 recognize the accused officer from photographs  
22 because you wear glasses, and on that particular  
23 dates of the incident you were not wearing your  
24 glasses?

1 A Yes.  
2 Q So you told the investigator shortly after  
3 this incident that you didn't think you could  
4 identify the officer that struck you?  
5 A Yes.  
6 Q You didn't know that officer's name at the  
7 time, did you?  
8 A No, sir.  
9 Q You certainly didn't know the star number  
10 or any other personal information?  
11 A No.  
12 Q And today is the first day that you have  
13 ever identified him, correct?  
14 MS. JACKSON: Objection, asked and  
15 answered.  
16 HEARING OFFICER JOHNSON: Sustained.  
17 BY MR. FAHY:  
18 Q Did you ever tell anyone prior to today  
19 that you could identify the person?  
20 A No.  
21 Q Let me ask you this. Before you testified  
22 here, did you review anything?  
23 A Yes.  
24 Q What did you review?

1 A My statement.  
2 Q The statement that you gave to OPS?  
3 A Yes.  
4 Q Where did you review that, in the  
5 conference room?  
6 A Yes.  
7 Q When you were reviewing your statement,  
8 your family members were also in the room?  
9 A Yes.  
10 Q And they were also reviewing their  
11 statements?  
12 A Yes.  
13 Q And you guys all came together?  
14 A Yes.  
15 Q And you talked about this incident?  
16 A Yes.  
17 Q You talked about it before anyone  
18 testified?  
19 A Yes.  
20 Q And after the other witnesses testified,  
21 did they come back and talk to you about their  
22 testimony?  
23 MS. JACKSON: I object.  
24 HEARING OFFICER JOHNSON: Based on?

1 MS. JACKSON: It's improper impeachment,  
2 and I think it's not relevant.  
3 HEARING OFFICER JOHNSON: Overruled.  
4 MR. FAHY: Can you read back my question?  
5 (Question read.)  
6 THE WITNESS: Yes.  
7 BY MR. FAHY:  
8 Q Mr. Larkins, on October 7, 2006, in the  
9 late morning hours, you testified you got into some  
10 kind of altercation with your cousin, right?  
11 A Yes.  
12 Q Greg Mitchem?  
13 A Norman Mitchem.  
14 Q Also known as Norman Perry, Junior?  
15 A Yes.  
16 Q Now, what was this argument about?  
17 A I can't remember.  
18 Q Do you remember anything about the  
19 argument?  
20 A No.  
21 Q Do you remember who started the argument?  
22 A No.  
23 Q Do you remember any topic that was  
24 discussed during the argument?

1 A No.  
2 Q Did you have a problem with the way his  
3 hair looked?  
4 A No.  
5 Q Did you have a problem with who cut his  
6 hair?  
7 A No.  
8 Q Were you drunk at that particular time?  
9 MS. JACKSON: Objection, asked and  
10 answered. He asked about alcoholism and had he been  
11 drinking.  
12 MR. FAHY: No, that was at the hospital  
13 later that night, if he reported alcohol abuse. I'm  
14 talking about at this time.  
15 HEARING OFFICER JOHNSON: I thought you  
16 asked him actually at the time he abused alcohol, so  
17 I'm going to sustain that.  
18 BY MR. FAHY:  
19 Q Were you using drugs that morning?  
20 A No.  
21 Q You were sober?  
22 A Yes.  
23 Q And it's your memory that for some unknown  
24 reason the argument escalated to a fight?

1 A No.  
2 Q But this argument led to or escalated to  
3 an actual physical altercation, correct?  
4 A Yes.  
5 Q Had you had many physical altercations  
6 with your cousin prior to that?  
7 A Yes.  
8 Q So several times. It wasn't an unusual  
9 incident for you two to be fighting?  
10 A Yes.  
11 Q Was the reason why you were fighting  
12 because you were upset with your cousin because he  
13 was trying to have you -- I'm sorry. Strike that  
14 question.  
15 Do you remember any kind of argument about  
16 his haircut?  
17 MS. JACKSON: Objection. The witness  
18 stated he didn't remember.  
19 HEARING OFFICER JOHNSON: But he is  
20 allowed to on cross probe that a little bit, so I'm  
21 going to overrule that.  
22 BY MR. FAHY:  
23 Q You don't remember? Did you have a  
24 problem with his hair on that day?

1 MS. JACKSON: Objection, mischaracterizes  
2 his testimony. He didn't say it was unknown. He  
3 said he didn't recall.  
4 HEARING OFFICER JOHNSON: I guess that  
5 would be an unknown. I'll sustain the objection.  
6 BY MR. FAHY:  
7 Q It just led to an actual fight, correct?  
8 A Yes.  
9 Q Who started the fight, do you remember  
10 that?  
11 A I don't know.  
12 Q You don't remember?  
13 A No.  
14 Q Eventually, did the two of you wind up on  
15 the ground fighting?  
16 A Yes.  
17 Q You were throwing punches at him?  
18 A No.  
19 Q You never punched him?  
20 A No.  
21 Q Did he punch you?  
22 A No.  
23 Q Just a wrestling match?  
24 A Yes.



1 Q Do you remember your mother telling you  
2 guys to stop fighting?  
3 A Yes.  
4 Q Do you remember your father -- or not your  
5 father, Greg's father?  
6 A Norman's father?  
7 Q Norman's father.  
8 A Yes.  
9 Q You guys didn't stop fighting, though, did  
10 you?  
11 A We slowed down.  
12 Q How did you slow it down?  
13 A We started backing away from each other.  
14 Q Do you remember the police arriving?  
15 A Yes.  
16 Q Were you slowed down at that point?  
17 A Yes.  
18 Q So you had already backed away from each  
19 other?  
20 A Yes.  
21 Q Before any police officer arrived?  
22 A Yes.  
23 Q So when the officers arrived, there was no  
24 fighting?

1 A No.  
2 Q Were you yelling?  
3 A Yes.  
4 Q Were you cursing?  
5 A No.  
6 Q Were you cursing your mother?  
7 A No.  
8 Q Were you cursing your aunt?  
9 A No.  
10 Q How about Greg -- I'm sorry. I keep  
11 calling him Greg. How about Norman?  
12 A No.  
13 Q No cursing at Norman?  
14 A No.  
15 Q Just nice words to him?  
16 A Just arguing.  
17 Q How about Mr. Perry, Senior, were you  
18 cursing at him at all?  
19 A No.  
20 Q Where were you when the police arrived?  
21 A On the porch, front porch.  
22 Q Standing on the porch?  
23 A Yes.  
24 Q Were you in a doorway?

1 A No.  
2 Q Who else was on the porch when the police  
3 arrived?  
4 A My mother, uncle and auntie.  
5 Q Where was Greg?  
6 MS. JACKSON: Norman?  
7 BY MR. FAHY:  
8 Q Where was Norman?  
9 A Norman was down on the other landing.  
10 Q How far from you?  
11 A About 10, 15 feet.  
12 Q And the landing, is that where the  
13 concrete sidewalk is?  
14 A No. We got another set of stairs.  
15 Q Were you two arguing when the police  
16 arrived?  
17 A Yes.  
18 Q Were you upset with him?  
19 A Yes.  
20 Q Was he still upset with you?  
21 A Yes.  
22 Q And it's your testimony that at that time  
23 some male police officer walked up the stairs and  
24 approached you?

1 A Yes.  
2 Q Do you remember saying anything to that  
3 police officer?  
4 A No.  
5 Q Do you remember telling that police  
6 officer, I'm not going to jail?  
7 A No.  
8 Q Do you remember saying anything to him  
9 such as, They might have to get the entire squad,  
10 because you didn't do anything, and you were not  
11 going to jail?  
12 MS. JACKSON: Objection,  
13 mischaracterization of his statement.  
14 HEARING OFFICER JOHNSON: Well, I mean,  
15 it's a straight up question.  
16 He could ask him anything, Did you say X,  
17 Y, Z? So he hasn't tried to impeach him yet. So he  
18 said no to that.  
19 BY MR. FAHY:  
20 Q Was the reason why you were upset when the  
21 police were there was because your cousin was trying  
22 to have you arrested?  
23 A No.  
24 Q You weren't upset about that?



1 A I was upset. We just got through arguing,  
2 wrestling.

3 Q But it wasn't because he was trying to  
4 have you arrested?

5 A No.

6 MS. JACKSON: Objection.

7 HEARING OFFICER JOHNSON: Overruled.

8 BY MR. FAHY:

9 Q Do you remember when you were interviewed  
10 by OPS on October 16, 2006, telling the OPS  
11 investigator that you walked around, as you were  
12 upset that your cousin was trying to have you  
13 arrested? Do you remember saying that?

14 A I don't remember saying that.

15 MR. FAHY: I think I'm on No. 2.

16 (WHEREUPON, Respondent's Exhibit  
17 No. 2 was marked for  
18 identification.)

19 BY MR. FAHY:

20 Q If I can show you what's been marked as  
21 Respondent's Exhibit No. 2. I'm handing you now  
22 what I've marked as Respondent's Exhibit 2 for  
23 identification.

24 Do you recognize that document?

1 HEARING OFFICER JOHNSON: No. He said no  
2 to this, so that is improper impeachment.

3 MS. JACKSON: I don't recall that, so I  
4 guess I'm wrong.

5 BY MR. FAHY:

6 Q And do you remember, as you already  
7 testified, you were talking loudly, right?

8 A Yes.

9 Q You were upset?

10 A Yes.

11 Q Do you remember a male officer telling you  
12 to be quiet or that he would arrest you?

13 A No.

14 Q Do you remember saying to that police  
15 officer after he ordered you to be quiet or you  
16 would be arrested that they might have to come, the  
17 entire squad might have to come because you didn't  
18 do anything, and you weren't going to jail? Do you  
19 remember saying that?

20 A No.

21 Q If I can call your attention to that  
22 document marked 2, if I could call your attention to  
23 page one, which would be the fourth sentence, does  
24 that sentence read in your statement that "Larkins

1 A Yes.

2 Q Is that a summary of the statement that  
3 you gave to OPS on October 16, 2006, relative to  
4 this incident?

5 A Yes.

6 Q Is that your initials that appear on the  
7 bottom of page one?

8 A Yes.

9 Q Turning to page two of that statement,  
10 does your signature appear there?

11 A Yes.

12 Q And did you read this document before you  
13 signed it and initialed it?

14 A Yes.

15 Q I'm going to call your attention to what I  
16 believe would be page one, the third sentence.

17 Isn't it true that when you were  
18 interviewed by OPS, you told them you walked around,  
19 as you were upset that your cousin was trying to  
20 have you arrested?

21 A Yes.

22 MS. JACKSON: I object. That's improper  
23 impeachment. The witness didn't recollect. So if  
24 this was refreshing memory, that's one thing.

1 related that he was upset, was talking loud, and the  
2 male officer ordered him to be quiet, or he would be  
3 arrested and the whole squad would come to arrest  
4 him"?

5 A I don't see that.

6 Q It's on page one.

7 MS. JACKSON: The fifth line down.

8 THE WITNESS: Okay.

9 BY MR. FAHY:

10 Q Is that something you told to the OPS  
11 investigator?

12 A Yes.

13 Q Did you also tell the OPS investigator  
14 that you responded to that officer that they might  
15 have to come, because you did not do anything and  
16 you were not going to jail?

17 A Yes.

18 Q Isn't it true that after the police who  
19 arrived on the scene actually had to physically  
20 separate you from your cousin?

21 A No.

22 Q They never had to do anything to separate  
23 the two of you from fighting?

24 A No.

1 Q Isn't it true that when the police were on  
2 the scene and after they separated you that you went  
3 back after your cousin, Mr. Mitchem?

4 A No.

5 MS. JACKSON: Objection.

6 HEARING OFFICER JOHNSON: Overruled.  
7 What would be the objection to that?

8 MS. JACKSON: Isn't it true that when they  
9 separated the two of you, he just said that wasn't  
10 the case, so it mischaracterizes the testimony.

11 HEARING OFFICER JOHNSON: I see, to the  
12 form of the question.

13 Do you want to restate that question?

14 BY MR. FAHY:

15 Q After you were separated, or after the  
16 fight stopped, did you go back after Mr. Mitchem and  
17 start to pummel him?

18 A No.

19 Q And isn't it true that when you did start  
20 to pummel him, that's when the male officer stepped  
21 in and used his baton?

22 A No.

23 MS. JACKSON: Objection to the form of the  
24 question.

1 A No.

2 Q Was he on the landing?

3 A Yes.

4 Q How far was he from you?

5 A About a foot.

6 Q Were you face to face at that point?

7 Where were you standing in relation to  
8 him?

9 A Sideways.

10 Q So he was on the side of you?

11 A Yes.

12 Q And were you facing towards the street,  
13 which would be Marshfield?

14 A Yes.

15 Q And which way was the officer standing, or  
16 facing, I should say?

17 A North.

18 Q Okay. So if he was facing north, which  
19 side of your body was he on?

20 A On my right side.

21 Q And where was your cousin Norman at that  
22 point?

23 A He was down on the landing.

24 Q And this police officer is talking to you

1 What evidence saying that he pummeled him  
2 a second time? That's what the question is  
3 predicated upon.

4 HEARING OFFICER JOHNSON: I'm going to  
5 sustain that, since this is the central part of the  
6 defense.

7 Can you restate that one without --

8 MR. FAHY: It's cross-examination, for  
9 one. I'd like to explore what he's saying.

10 MS. JACKSON: But that's not what he's  
11 saying, and there's an objection, form of the  
12 question.

13 HEARING OFFICER JOHNSON: There is a run  
14 up to the ultimate question that assumes an answer  
15 to the preceding question, so that's her objection.

16 BY MR. FAHY:

17 Q Is it your testimony that this police  
18 officer, this male police officer, just walked up  
19 the steps and confronted you?

20 A Yes.

21 Q You were behaving yourself at that point?

22 A Yes.

23 Q And this male police officer, was he  
24 standing on the steps when he confronted you?

1 on your right side?

2 A Yes.

3 Q About a foot away?

4 A Yes.

5 Q But you're not facing him?

6 A Right.

7 Q You're facing toward the street?

8 A Yes.

9 Q And you're telling us at that point while  
10 he was standing on the side of you, he struck you on  
11 the head?

12 A My leg.

13 Q Are you saying that he hit you on the leg  
14 first?

15 A Yes.

16 Q Which leg did he hit you?

17 A My right.

18 Q With a baton?

19 A Yes.

20 Q And then what did he do?

21 A Hit me on my head.

22 Q So you're saying that -- so it was your  
23 right knee?

24 A Yes.

1 Q And then your head?  
2 A Yes.  
3 Q Where on your head?  
4 A (Indicating) Right back here.  
5 MR. FAHY: For the record, and I believe  
6 we have a video, he's pointing to the middle of the  
7 back of his head.  
8 HEARING OFFICER JOHNSON: Right.  
9 BY MR. FAHY:  
10 Q Did you have your hands on the back of  
11 your head at that point?  
12 A No.  
13 Q Did you have your hands on the back of  
14 your head?  
15 A No.  
16 Q Did you have them anywhere up above your  
17 body?  
18 A No.  
19 Q How many times did he hit you in the head?  
20 A I can't recall.  
21 Q Can you proximate?  
22 A Three, four times.  
23 Q Three or four times?  
24 A Yes.

1 about what he agrees with.  
2 HEARING OFFICER JOHNSON: Sustained.  
3 BY MR. FAHY:  
4 Q Did the officer strike you anywhere else?  
5 A No.  
6 Q And after these strikes, you turned and  
7 you ran into your aunt's apartment, correct?  
8 A Yes.  
9 Q Up the second floor?  
10 A Yes.  
11 Q After you went into the apartment, did you  
12 shut the door?  
13 A I can't recall.  
14 Q Do you remember the door being locked  
15 after you entered?  
16 A The door that was locked was my apartment.  
17 Q I'm talking about the other apartment.  
18 When you ran into your Aunt Etta's door,  
19 do you remember the door being locked after you  
20 entered?  
21 A No, I don't recall.  
22 Q Do you remember telling OPS investigators  
23 in October of 2006 after you entered your auntie's  
24 hallway, you locked the door? Do you remember

1 Q With a metal baton?  
2 A Yes.  
3 Q And you didn't go down?  
4 A No.  
5 Q Did he hit you anywhere else?  
6 A Just my leg and my head.  
7 Q Your right knee and four strikes to the  
8 head?  
9 A Yes.  
10 Q Let me ask this. Do you remember when you  
11 spoke to OPS back in October of 2006, that same  
12 interview?  
13 A Yes.  
14 Q Do you remember telling the OPS  
15 investigator that this male officer struck you about  
16 the back of your head twice, then on your left knee?  
17 Do you remember telling the investigator that?  
18 A Yes.  
19 Q So back in October of 2006, it's a little  
20 different than what you're describing today, would  
21 you agree with me?  
22 A It's a long time.  
23 Q I completely agree with you.  
24 MS. JACKSON: Objection to the commentary

1 telling them that?  
2 A I don't remember telling them that.  
3 Q If I could call your attention to your  
4 statement that's still in front of you, Respondent's  
5 Exhibit No. 2, if I could direct your attention to  
6 page one, the first paragraph, the second from the  
7 last sentence.  
8 MS. JACKSON: I object on materiality.  
9 Whether he told them the door was locked  
10 or not is not material. Whether he recalls it is  
11 not material.  
12 HEARING OFFICER JOHNSON: Well, I think it  
13 is material, because it's a part of the account of  
14 what actually happened, and it happens moments after  
15 the striking. So I would have to disagree with that  
16 and overrule that.  
17 THE WITNESS: What paragraph?  
18 BY MR. FAHY:  
19 Q Paragraph one, on page one, the second  
20 from last sentence.  
21 Do you remember telling OPS in October of  
22 2006 that you ran into your auntie's hallway, locked  
23 the door?  
24 A Yes.



1 Q When you ran, you knew that the police  
2 officer was trying to arrest you, didn't you?  
3 A No.  
4 Q You were running away from the police  
5 officer, weren't you?  
6 A Yes.  
7 Q And you certainly didn't want to go to  
8 jail, did you?  
9 A I didn't want to get hit again.  
10 Q Now, where did you go after you went into  
11 your aunt's apartment?  
12 A Up the stairs and out the back.  
13 Q Did you ever go back into your home?  
14 A Yes.  
15 Q Before you went out the back, did you  
16 go --  
17 A No.  
18 Q Okay. When you got up into your aunt's  
19 apartment, did you run to the back door?  
20 A Yes.  
21 Q And did you run down the back stairs?  
22 A Yes.  
23 Q And did you run out the back gate?  
24 A Yes.

1 Q And where does he live?  
2 A He stays across the alley, on Paulina.  
3 Q How long did you stay at your friend's  
4 house?  
5 A Five, ten minutes.  
6 Q Where did you go from there?  
7 A I went and got me a ride.  
8 Q Where did you go?  
9 A I can't recall. I don't know where I went  
10 after that.  
11 Q Do you know who gave you the ride?  
12 A No. I think he gave me the ride.  
13 Q Antonio?  
14 A Yes.  
15 Q Where did you guys go?  
16 A He wasn't with me. I left his house.  
17 Q I'm asking where did you go, the two of  
18 you?  
19 A He wasn't with me. I left his house.  
20 Q But you said you got yourself a ride,  
21 right?  
22 A Yes.  
23 Q Was it Antonio that gave you the ride?  
24 A I assume so.

1 Q Did you see anyone as you ran out?  
2 A No.  
3 Q Was anyone out there when you ran out?  
4 A No.  
5 Q Did you stop before you ran out?  
6 A Yes.  
7 Q Where did you stop?  
8 A At the gate. I had to open the gate.  
9 Q So that's the back gate that leads into  
10 the alley?  
11 A Yes.  
12 Q So other than having to stop to open the  
13 back gate, that's the only time that you stopped  
14 before you left?  
15 A Yes.  
16 Q And were you running at this point?  
17 A Jogging.  
18 Q Where did you jog to?  
19 A Across the alley.  
20 Q Where did you go once you crossed the  
21 alley?  
22 A A friend's house.  
23 Q Who is your friend?  
24 A Antonio Cooper.

1 Q You assume so?  
2 A Yes.  
3 Q You don't remember?  
4 A I don't remember.  
5 Q Do you remember where you went?  
6 A After leaving his house?  
7 Q Yes.  
8 A No.  
9 Q Did you ever go back to your home that  
10 day?  
11 A Yes.  
12 Q When did you go back?  
13 A Sometime. I don't know how much later.  
14 Q Would it have been about eight hours?  
15 A No.  
16 Q More or less?  
17 A Less.  
18 Q How much less?  
19 A I don't know, four, five hours. I don't  
20 know.  
21 Q Was anyone else in the home?  
22 A Yes.  
23 Q Who was home?  
24 A My mother.

1 Q Did you see anyone else?  
2 A **Probably, my uncle.**  
3 Q Your uncle. Is that Mr. Perry, Senior?  
4 A **No.**  
5 Q Who was the uncle that you saw?  
6 A **Cecil Larkins.**  
7 Q Did you see your cousin Norman when you  
8 got back home?  
9 A **I don't think so.**  
10 Q When you got home later that night, did  
11 your mother call for an ambulance?  
12 A **No.**  
13 Q I'm going to call your attention again to  
14 what's been marked Respondent's Exhibit 2 for  
15 identification. Do you still have that in front of  
16 you?  
17 A **Yes.**  
18 Q If I could direct your attention to  
19 paragraph two on page one in the middle of the  
20 paragraph, did you tell the investigator that your  
21 mother called for an ambulance, which responded and  
22 transported you to Holy Cross Hospital for medical  
23 treatment?  
24 A **I see that.**

1 Q As you sit here today, you don't remember  
2 that?  
3 A **I don't recall.**  
4 Q But your testimony was you recalled your  
5 cousin driving you there, right?  
6 A **Yes.**  
7 Q Are you mixing this up with another  
8 incident?  
9 A **No.**  
10 Q At the hospital you were treated and  
11 released?  
12 A **Yes.**  
13 Q And when you were at the hospital, you  
14 mentioned that you got some stitches, correct?  
15 A **Right.**  
16 Q There was seven of them?  
17 A **Yes.**  
18 Q That was in the location in the back of  
19 your head?  
20 A **Yes.**  
21 Q Other than that, there was no other  
22 treatment to your head, correct?  
23 A **Yes.**  
24 Q What was the treatment?

1 **HEARING OFFICER JOHNSON:** No. He said  
2 correct.  
3 **MR. FAHY:** I didn't hear you.  
4 **BY MR. FAHY:**  
5 Q That was the only treatment to your head,  
6 correct?  
7 A **Yes.**  
8 Q What was the medication you were given?  
9 A **I don't recall.**  
10 Q Do you recall complaining about your right  
11 shoulder being injured?  
12 A **Yes.**  
13 Q This police officer that you described, he  
14 never hit you in the right shoulder, did he?  
15 A **No.**  
16 Q You injured that yourself?  
17 A **Yes.**  
18 **MR. FAHY:** I have no further questions.  
19 **MS. JACKSON:** I have a few more questions.  
20 **REDIRECT EXAMINATION**  
21 **BY MS. JACKSON:**  
22 Q The shoulder injury, how did that occur?  
23 A **Trying to get away. While he was hitting**  
24 **me in the head, I tried to get away and pushed into**

1 **the door, and the door was locked. I hurt my**  
2 **shoulder there.**  
3 Q When the officer asked you to get down,  
4 did he tell you that you were under arrest?  
5 A **No.**  
6 Q When you ran across the alley to  
7 Antonio's, were you running away from the officer?  
8 A **No.**  
9 Q Did you have any understanding that the  
10 officer or any officer was trying to chase you?  
11 A **No.**  
12 Q Why did you run across the alley?  
13 A **To get away.**  
14 Q What were you running from?  
15 A **Him hitting me in my head.**  
16 Q Now, prior to him telling you to get down,  
17 had he also told you to stop talking?  
18 A **I don't recall. He might have.**  
19 Q Did you ever stop talking to the officer?  
20 A **Yes.**  
21 Q Do you know if he was annoyed by you?  
22 **MR. FAHY:** Objection.  
23 **HEARING OFFICER JOHNSON:** Sustained.  
24 Anything else?



Page 221

Page 223

1 **MS. JACKSON:** I'm not sure. No, I don't  
2 have anything further.

3 **HEARING OFFICER JOHNSON:** Any recross?

4 **MR. FAHY:** No further questions. Thank  
5 you.

6 **HEARING OFFICER JOHNSON:** Thank you for  
7 coming.

8 So we're going to be recessed until  
9 tomorrow. We're going to start at 10:00.

10 **MS. JACKSON:** I'm prepared to rest. I  
11 just want to get in my last exhibit.

12 City's Exhibit No. 6, the evidence  
13 technician photos, pursuant to a stipulation that  
14 these were taken on the date and time stamped by  
15 the -- on the photo card by Officer Parker on  
16 October 16, 2006, 16:00 hours.

17 If he were called to testify, he would  
18 testify that he is the evidence technician who was  
19 familiar with operating the camera, took the  
20 pictures, and they are accurate copies of the photos  
21 he took on the date he took them.

22 **HEARING OFFICER JOHNSON:** And we had a  
23 stipulation on this, right?

24 **MR. FAHY:** Yes.

1 STATE OF ILLINOIS )  
2 COUNTY OF C O O K ) SS.

3

4 **DANIEL M. PRISCU** hereby certifies that he  
5 reported in shorthand the proceedings in the  
6 above-entitled matter and that the foregoing is a  
7 true and correct transcript of said proceedings.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Certified Shorthand Reporter

Page 222

1 **HEARING OFFICER JOHNSON:** So those will be  
2 received.

3 **MS. JACKSON:** The City rests at this time.

4 **HEARING OFFICER JOHNSON:** The City rests.

5 All right. Great. So we'll see everyone tomorrow.

6 (WHICH WERE ALL THE PROCEEDINGS  
7 HAD IN THE ABOVE-ENTITLED CAUSE  
8 ON THIS DATE AND TIME.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

-1 MAR 2012 12 14

COPY

**In The Matter Of:**  
*Chicago Police Board*  
*Bruce Askew*

---

*Report of Proceedings*  
*February 24, 2012*

---

*Wichmann-Klawitter Reporting Ltd.*  
*(312) 368-1228 - Chicago*

Original File Askew022412.txt

Min-U-Script® with Word Index

1 BEFORE THE CITY OF CHICAGO POLICE BOARD  
2  
3 IN THE MATTER OF: )  
4 CHARGES AGAINST )  
5 P.O. BRUCE ASKEW, ) No. 11 PB 2776  
6 Respondent. )  
7 30 North LaSalle Street  
8 Suite 1220  
9 Chicago, Illinois 60602  
10  
11 February 24, 2012  
12 10:00 o'clock a.m.  
13 PRESENT: Mr. Thomas E. Johnson, Hearing Officer  
14 Mr. Max Caproni, Executive Director  
15 Ms. Wynter C.N. Jackson,  
16 City of Chicago Corporation Counsel,  
17 on behalf of the Superintendent;  
18 Mr. William N. Fahy,  
19 on behalf of the Respondent.  
20  
21  
22  
23 REPORTED BY: DANIEL M. PRISCU, CSR.  
24 License No. 084-003982

1 INDEX  
2 WITNESS DX CX RDX RCX  
3 DERRICK SHINN  
4 By Mr. Fahy 227 242  
5 By Ms. Jackson 237 242  
6  
7 BRUCE ASKEW, SENIOR  
8 By Mr. Fahy 243  
9 By Ms. Jackson 255  
10  
11 PAMELA SUTTON  
12 By Mr. Fahy 271  
13 By Ms. Jackson  
14  
15 REDACTED  
16 Page Line  
17 266 14  
18 through  
19 267 2  
20  
21 EXHIBITS  
22 EXHIBIT MARKED ADMITTED  
23 Respondent's No. 3 226 227  
24 Respondent's No. 4 234

1 HEARING OFFICER JOHNSON: We are back on  
2 the record in the case of Police Officer Bruce  
3 Askew, and we are ready for the Respondent's case.  
4 The Respondent wishes to offer an exhibit  
5 at the outset, right?  
6 (WHEREUPON, Respondent's Exhibit  
7 No. 3 was marked for  
8 identification.)  
9 MR. FAHY: That's correct. I'll mark it  
10 as Respondent's Exhibit No. 3, and what it is it  
11 contains General Order 02-8, which is titled Use of  
12 Force Guidelines, which is four pages. And then it  
13 also has the Use of Force Model, which is General  
14 Order G 03-02-01. That's the next three pages.  
15 And then it also contains Chicago Police  
16 Department Force Options, which is General Order  
17 G 03-0202, which is four pages.  
18 I'd ask that administrative notice be  
19 taken of that document.  
20 HEARING OFFICER JOHNSON: The first one,  
21 Use of Force Guidelines, mine has three pages at the  
22 beginning. Is that right?  
23 MR. FAHY: It is three pages. I'm sorry.  
24 I misspoke.

1 HEARING OFFICER JOHNSON: And the City has  
2 no objection to this, right?  
3 MS. JACKSON: No.  
4 HEARING OFFICER JOHNSON: So that will be  
5 received.  
6 Can you swear our witness.  
7 (Witness sworn.)  
8 DERRICK SHINN,  
9 called as a witness herein, having first been duly  
10 sworn, was examined and testified as follows:  
11 DIRECT EXAMINATION  
12 BY MR. FAHY:  
13 Q Sir, could you please introduce yourself  
14 to the Members of the Board by stating your full  
15 name and please spell your last name.  
16 A Derrick Shinn, S-h-i-n-n.  
17 Q How are you employed?  
18 A I'm a sergeant with the Chicago Police  
19 Department.  
20 Q How long have you been a Chicago police  
21 officer?  
22 A Twenty-five years.  
23 Q Of those 25 years, how long have you held  
24 the rank of Sergeant?



1 **A Fifteen years.**  
2 Q Where are you currently assigned, sir?  
3 **A The 22nd District, Morgan Park.**  
4 Q Sergeant, I'm going to call your attention  
5 back to October 7, 2006.  
6 Where were you assigned at that point in  
7 your career?  
8 **A The Englewood District.**  
9 Q Is that the Seventh District?  
10 **A Yes.**  
11 Q Were you on duty and working on that  
12 particular day?  
13 **A Yes, I was.**  
14 Q In your capacity as a police sergeant?  
15 **A Yes.**  
16 Q Now, at some point shortly after noon on  
17 that particular day, did you respond to a request  
18 for a supervisor?  
19 **A Yes, I did.**  
20 Q Do you know who that request came from?  
21 Do you remember?  
22 **A I believe that was a request for a**  
23 **supervisor by Officer Bruce Askew.**  
24 Q After receiving that request, did you

1 names?  
2 **A No, I don't.**  
3 Q Now, when you spoke with Officer Askew,  
4 did he tell you anything about force that he had to  
5 use while he was on the scene?  
6 **A Yes, he did.**  
7 Q Did he describe the circumstances that led  
8 to him using the force that he used?  
9 **A Yes, he did.**  
10 Q Did he tell you what impact weapon he  
11 used?  
12 **MS. JACKSON:** Objection.  
13 **HEARING OFFICER JOHNSON:** Leading?  
14 **MS. JACKSON:** Yes.  
15 **HEARING OFFICER JOHNSON:** No, I don't  
16 think so. Overruled.  
17 **THE WITNESS:** He used his asp.  
18 **BY MR. FAHY:**  
19 Q And given the circumstances of what he  
20 explained to you and his reasons for using the asp,  
21 did you consider that reasonable use of force?  
22 **MS. JACKSON:** Objection, form of the  
23 question.  
24 He's having him testify to what

1 proceed or drive to 6408 South Marshfield?  
2 **A Yes, I did.**  
3 Q Were you dressed in your police uniform on  
4 that particular day?  
5 **A Yes.**  
6 Q Now, after you arrived there, did you see  
7 Officer Askew?  
8 **A Yes, I did.**  
9 Q And did you have an opportunity to speak  
10 to Officer Askew about the event that preceded you  
11 arriving there?  
12 **A Yes.**  
13 Q In addition to Officer Askew, did you  
14 speak to anyone else?  
15 **MS. JACKSON:** Objection to the leading  
16 nature of the question.  
17 **HEARING OFFICER JOHNSON:** Overruled for  
18 right now.  
19 **BY MR. FAHY:**  
20 Q Did you speak with anyone else on the  
21 scene?  
22 **A Yes. There was an elderly couple on the**  
23 **scene that was supposed to be witnesses.**  
24 Q As you sit here now, do you remember their

1 circumstances he understood in order to give this  
2 answer.  
3 **HEARING OFFICER JOHNSON:** In other words,  
4 you're asking for more foundation as to what Askew  
5 told him?  
6 **MS. JACKSON:** Yes, form of the question.  
7 **HEARING OFFICER JOHNSON:** Can we lay a  
8 little bit more foundation as to what Askew told  
9 him.  
10 **BY MR. FAHY:**  
11 Q When you spoke with Officer Askew, what  
12 did he relate to you regarding the force that he  
13 used?  
14 **A He informed me that in an attempt to break**  
15 **up a fight, the offender did not respond to his**  
16 **verbal commands, and he used the asp, striking**  
17 **offender to try to get him to stop.**  
18 Q Did he tell you where he used the asp on  
19 the offender?  
20 **A His legs.**  
21 Q Are you familiar with the use of force  
22 model that is used to train Chicago police officers?  
23 **A Yes.**  
24 Q And given the circumstances of what he

1 explained to you on that day, did the force that he  
2 use seem reasonable to you?  
3 **A Yes. It fell within the guidelines for**  
4 **the use of force.**  
5 **Q** Now, after he told you that he had to use  
6 his asp, did he also talk to you about what is  
7 commonly referred to as a TRR?  
8 **A Yes.**  
9 **Q** What is a TRR, sir?  
10 **A Technical Response Report.**  
11 **Q** And when Officer Askew told you or asked  
12 you about the TRR, did you have a discussion with  
13 him about whether or not a TRR was needed to be  
14 prepared?  
15 **A Yes, we did.**  
16 **Q** At that point, did you think a TRR needed  
17 to be prepared?  
18 **A There was a point that was unclear to me.**  
19 **Q** Do you remember why it was unclear to you  
20 whether or not a TRR was needed at that point?  
21 **A It wasn't based on the use of force. It**  
22 **was based more so on the identity being known of**  
23 **the -- the offender being known, and so I wasn't**  
24 **sure.**

1 **Q** Was there an offender in custody at the  
2 time?  
3 **A No.**  
4 **Q** Did that also factor into your indecision  
5 as to whether or not a TRR needed to be prepared?  
6 **MS. JACKSON:** Objection, form of the  
7 question?  
8 **HEARING OFFICER JOHNSON:** No, overruled.  
9 **MS. JACKSON:** He's testifying for the  
10 witness.  
11 **HEARING OFFICER JOHNSON:** I think he's  
12 asking a question about what effect this had that  
13 there was no offender in custody, if any effect.  
14 **THE WITNESS:** Yes.  
15 **BY MR. FAHY:**  
16 **Q** When you say "yes," what do you mean, sir?  
17 **A Previous experience, most instances you**  
18 **would have somebody in custody. In this case,**  
19 **having no one in custody was the first time.**  
20 **Q** Did Officer Askew prepare a report  
21 relative to this incident?  
22 **A Yes, he did.**  
23 **Q** And in that report did he detail that he  
24 had used his baton during the attempt to stop the

1 offender's attack?  
2 **MS. JACKSON:** Objection to the leading  
3 nature of the question.  
4 **HEARING OFFICER JOHNSON:** Overruled.  
5 **THE WITNESS:** Yes.  
6 **BY MR. FAHY:**  
7 **Q** Did you have an opportunity to review that  
8 report?  
9 **A Yes, I did.**  
10 **MR. FAHY:** I'll show you what's going to  
11 be marked as Respondent's Exhibit 4.  
12 (WHEREUPON, Respondent's Exhibit  
13 No. 4 was marked for  
14 identification.)  
15 **BY MR. FAHY:**  
16 **Q** I'm showing you what's been marked as  
17 Exhibit No. 4, Respondent's Exhibit No. 4.  
18 Do you recognize that document?  
19 **A It looks like the report.**  
20 **Q** Does your signature appear on that report?  
21 **A Yes, it does.**  
22 **Q** And where does your signature appear?  
23 **A I was the approving supervisor.**  
24 **Q** So you approved the report later that day?

1 **A Yes.**  
2 **Q** And you never requested at that point  
3 later in the day that Officer Askew prepare a TRR,  
4 did you?  
5 **A No. No, I did not.**  
6 **Q** Now, you mentioned that you recall  
7 speaking to a couple of witnesses on the scene,  
8 correct?  
9 **A Yes, I did.**  
10 **Q** And can you describe them?  
11 **A A male and a female, black, and elderly,**  
12 **was supposed to be family members of the victim.**  
13 **Q** Did those folks tell you what they saw  
14 happen?  
15 **A Basically, they related to me --**  
16 **MS. JACKSON:** Objection, calls for a  
17 hearsay answer.  
18 **HEARING OFFICER JOHNSON:** I don't think  
19 so, because I assume this is going to be some kind  
20 of extrinsic impeachment.  
21 **MR. FAHY:** It is impeachment with, both,  
22 Mr. Perry, Senior, and also Etta Larkins.  
23 **HEARING OFFICER JOHNSON:** So it's coming  
24 in as -- that's what you're offering, right,



Page 236

1 extrinsic impeachment?

2 **MR. FAHY:** Yes, right.

3 **HEARING OFFICER JOHNSON:** So overruled.

4 **BY MR. FAHY:**

5 Q Did they tell you what they saw happen?

6 A Officer Askew responded to the scene,  
7 attempting to break up a fight between their family  
8 member and this offender that they described as a  
9 play cousin, and he did use the asp.

10 Q Did they tell you where he used the asp?

11 A About the legs.

12 Q Did they have any complaints to you at all  
13 about the actions of Officer Askew?

14 A They had no complaints.

15 Q Did anyone on the scene complain to you  
16 about the actions of Officer Askew?

17 A No complaint.

18 Q Did anyone during the course of the time  
19 that you were on the scene ever say to you that a  
20 police officer used a baton or a metal object to  
21 strike someone in the head?

22 A At no time.

23 **MR. FAHY:** No further questions.

24

1 asp, it came from him telling you that, right?

2 A Yes, initially.

3 Q And Mr. Askew told you that he used the  
4 asp in an attempt to physically separate the two  
5 people who were fighting; is that accurate?

6 A Yes.

7 Q When you spoke to the elderly couple, did  
8 you ever ask the elderly couple any questions about  
9 Mr. Askew using the asp?

10 A I asked them if they had any problem with  
11 Officer Askew's conduct.

12 Q And do you recall what their responses  
13 were?

14 A They said, No.

15 Q Did you ask the elderly couple about  
16 Officer Askew's actions -- strike that question.

17 Did you determine from the elderly couple  
18 whether Askew himself had to physically separate the  
19 two people that were fighting?

20 A I wouldn't be able to phrase it that way,  
21 no. I don't think I would have, because I don't  
22 think it was a dispute about the fight going on.

23 Q When you arrived on the scene, nobody was  
24 fighting, right?

Page 237

Page 239

1 **CROSS-EXAMINATION**

2 **BY MS. JACKSON:**

3 Q Sergeant Shinn, you testified that you  
4 didn't require or request Mr. Askew to draft a TRR  
5 on the scene, right? That was your testimony?

6 A I requested for him to go in to see the  
7 Watch Commander at that time, because it was unclear  
8 to me, so I referred him to see the Watch Commander  
9 for that purpose.

10 Q And so you never did tell Askew, No, you  
11 don't have to write one?

12 A No, I did not.

13 Q And at some point is it a correct or  
14 accurate statement that you did believe you should  
15 have instructed him to write a TRR?

16 A I do believe that now, yes.

17 Q I just want to take you back to the scene,  
18 Officer, once you arrived.

19 Isn't it true that it was Mr. Askew who  
20 indicated to you that he used his asp with the  
21 individual who was no longer on the scene, who you  
22 referred to as the offender, that information -- let  
23 me ask you this better question.

24 That information about Askew using his

1 A The offender was not there. The victim  
2 was not there.

3 Q So you learned about the fight and how  
4 they were allegedly separated from Askew describing  
5 to you what happened, right?

6 A Yes.

7 Q And you knew that Askew and another  
8 officer were called because two people were  
9 fighting?

10 A Yes.

11 Q The elderly couple, they didn't describe  
12 to you how the fight ended, did they?

13 A That after he, the victim, and offender  
14 had fallen, and after Officer Askew struck him again  
15 on the legs, he jumped up and ran off.

16 Q Now, did you hear that information from  
17 the elderly couple, or was that information that you  
18 were given from Askew?

19 A Actually, I got that from both of them.

20 Q From both the elderly couple?

21 A Both the elderly couple and from Officer  
22 Askew.

23 Q You said that you approached the elderly  
24 couple to ask them if they had any problems with

Page 240

1 Askew's conduct?  
2 **A Right.**  
3 **Q** What made you ask them about his conduct?  
4 **A Because of him informing me about him**  
5 **using the asp.**  
6 **Q** So you were verifying that what he told  
7 you was accurate?  
8 **A Attempting to, yes.**  
9 **Q** Did you ask the family members if the  
10 person you're describing as the offender had any  
11 injuries?  
12 **A I didn't ask.**  
13 **Q** So I just want to make sure I understand  
14 the nature of your testimony, Officer.  
15 When you stated that you believed Officer  
16 Askew's use of the asp was appropriate in terms of  
17 your familiarity with the use of force model, that  
18 was based on the fact that you understood that they  
19 were -- the two individuals were currently fighting  
20 each other when he used it, "he" being Askew when he  
21 used the asp?  
22 **A As it was described to me by Officer**  
23 **Askew, the offender was attacking the victim and**  
24 **would not respond to his verbal commands.**

Page 241

1 **Officer Askew reached out to try to pull**  
2 **him away and was unsuccessful in doing so. Then he**  
3 **went after and swung his asp at the legs to try to**  
4 **stop him.**  
5 **Q** And so based on your understanding of that  
6 information from Askew, that's why you're able today  
7 to say you believe his use of force was appropriate?  
8 **A Yes.**  
9 **Q** Now, if I told you that the individual who  
10 Mr. Askew struck with the asp was not engaged in any  
11 physical altercation with anyone else and was  
12 standing in an upright position, and Askew used the  
13 asp to hit him in three locations, on his knees or  
14 the calf area, near his shoulder and on the back of  
15 his head, would you have that same opinion, that use  
16 of force was appropriate in the scenario that I've  
17 just given you?  
18 **A In the scenario that you've given me that**  
19 **he was not actively engaged?**  
20 **Q** Yes, sir.  
21 **A It would not.**  
22 **Q** And you would agree, Sergeant Shinn, that  
23 using the asp is not appropriate in response to  
24 verbal -- to verbal altercations or verbal comments

Page 242

1 that may be made by an offender?  
2 **A That is true.**  
3 **Q** And now, Sergeant Shinn, your  
4 understanding is that a TRR is to be drafted even if  
5 there is no person in custody, if there is no  
6 arrestee; is that accurate?  
7 **A That is accurate.**  
8 **MS. JACKSON:** I have nothing further for  
9 you.  
10 **HEARING OFFICER JOHNSON:** Any redirect for  
11 the Sergeant?  
12 **REDIRECT EXAMINATION**  
13 **BY MR. FAHY:**  
14 **Q** Sergeant, Officer Askew did ask you about  
15 the TRR, correct?  
16 **A Yes, he did.**  
17 **Q** And he did document his use of force,  
18 correct?  
19 **A Yes, he did.**  
20 **MR. FAHY:** Nothing further.  
21 **RECROSS-EXAMINATION**  
22 **BY MS. JACKSON:**  
23 **Q** When you say "documented," he indicated on  
24 the General Offense Report that he used his asp,

Page 243

1 right?  
2 **A That's correct.**  
3 **Q** Based on your conferring with Askew while  
4 you were on the scene, you later approved that  
5 report, because it contained the information that  
6 you understood to be true at that time; is that  
7 correct?  
8 **A That's also correct.**  
9 **MS. JACKSON:** I have nothing further.  
10 **HEARING OFFICER JOHNSON:** Thank you,  
11 Sergeant. Thank you for coming down.  
12 You want to swear our witness.  
13 (Witness sworn.)  
14 **BRUCE ASKEW, SENIOR,**  
15 **called as a witness herein, having first been duly**  
16 **sworn, was examined and testified as follows:**  
17 **DIRECT EXAMINATION**  
18 **BY MR. FAHY:**  
19 **Q** Sir, could you please introduce yourself  
20 to the Members of the Board by stating your full  
21 name and please spell your last name.  
22 **A My name is Bruce Askew, Senior, A-s-k-e-w.**  
23 **Q** How are you employed?  
24 **A I'm employed by the Chicago Police**



1 **Department.**

2 Q How long have you been a Chicago police  
3 officer?

4 A **21 years, 9 months and 28 days.**

5 Q What was your position with the Police  
6 Department?

7 A **I was patrolman.**

8 Q Could you tell us what districts you've  
9 worked as a patrol officer in your career?

10 A **I trained in the Sixth District. I did a**  
11 **short stint in the 18th District in Cabrini Green.**  
12 **And after that, with the inception of CAPS, I was**  
13 **transferred to the Seventh District. And I've**  
14 **worked in the Seventh District, Englewood, about 17**  
15 **years.**

16 Q Did you work in any other districts  
17 besides the Seventh?

18 A **Then I went to the Roseland District.**

19 Q And what's the number of that district?

20 A **That's the Fifth District.**

21 Q In addition to being a patrol officer, did  
22 you ever serve as a field training officer?

23 A **Yes, I did.**

24 Q Could you tell us what a field training

1 A **When I arrived on the scene, Officer**  
2 **Sutton had arrived, and she called for an assisting**  
3 **unit, saying there were two men fighting like mad**  
4 **dogs, to send more units.**

5 Q Was Officer Sutton there before you?

6 A **Yes, she was.**

7 Q And as you arrived there, can you tell us  
8 what you saw?

9 A **I saw one gentleman on top of another**  
10 **gentleman, basically throwing punches, hammering**  
11 **him.**

12 Q The person that you saw on top of the  
13 other individual, do you now know who that person  
14 is?

15 A **I know him now to be Greg Larkins.**

16 Q As you arrived and this fight was in  
17 progress, what did you do?

18 A **I announced my office. I exited my**  
19 **vehicle.**

20 Q What happened then?

21 A **They continued fighting. I grabbed the**  
22 **bigger guy, the guy that was on top, and I pulled**  
23 **them apart.**

24 Q And that bigger guy, you're referring to

1 officer is?

2 A **A field training officer's responsibility**  
3 **is to indoctrinate new officers as they come to the**  
4 **street from the academy.**

5 Q Where did you work in that position?

6 A **In the Englewood District.**

7 Q Now I'm going to call your attention to  
8 October 7, 2006, sometime around noon on that day.

9 Were you on duty and working as a Chicago  
10 police officer?

11 A **Yes, I was.**

12 Q Were you assigned to the Seventh District?

13 A **I was assigned to the Seventh District,**  
14 **Beat 725.**

15 Q At about that time, did you respond to a  
16 call at 6408 South Marshfield?

17 A **Yes, I did.**

18 Q Do you recall what the nature of the call  
19 was?

20 A **Two individuals fighting.**

21 Q Did you then drive to the scene?

22 A **Yes, I did.**

23 Q Could you describe the scene when you  
24 arrived?

1 Mr. Larkins?

2 A **Mr. Larkins, yes.**

3 Q You were able to physically separate them  
4 at that point?

5 A **I was able to physically separate them.**

6 Q Could you tell us what happened after you  
7 physically separated the two fighters?

8 A **He was angry. Norman got up. And they**  
9 **were basically in each other's faces still going at**  
10 **it. And Larkins grabbed him again. I told him to**  
11 **stop. He threw punches. And that's when Norman**  
12 **went down again. And I struck Mr. Larkins with my**  
13 **baton.**

14 Q When Norman went down, did Larkins go on  
15 top of him?

16 A **I think he got on top of him. I can't**  
17 **recall for sure.**

18 Q At that point, when you saw him go back  
19 after Mr. Mitchem, what did you do? Did you say  
20 anything?

21 A **I told him to stop. He continued to do**  
22 **so. And that's when I deployed my baton.**

23 Q When you say "he continued to do so," what  
24 was he doing?

Page 248

1 **A He was actually grabbing onto his clothing**  
2 **and throwing punches.**

3 **Q You've been a police officer for over 20**  
4 **years?**

5 **A That is correct.**

6 **Q An you've been a field training officer?**

7 **A Yes, I have.**

8 **Q You've been trained on the use of force?**

9 **A Yes, I have.**

10 **Q At the point that you removed your baton,**  
11 **how would you characterize the actions of**  
12 **Mr. Larkins?**

13 **A He was an assailant.**

14 **Q If someone is an assailant, what type of**  
15 **force options are you allowed in your training?**

16 **A I'm allowed to take the next step up,**  
17 **which would be basically stunning blows, impact**  
18 **weapons.**

19 **Q And what is the impact weapon that you're**  
20 **equipped with as a patrol officer?**

21 **A The impact weapon I'm equipped with is an**  
22 **asp, a collapsible baton.**

23 **Q After you removed your baton, at that**  
24 **point did you say anything else to him?**

Page 249

1 **A I told him he was under arrest.**

2 **Q And what was his response when you told**  
3 **him he was under arrest?**

4 **A He told me he was not going back to jail.**

5 **Q When you used your baton to stop the**  
6 **attack, where did you hit him?**

7 **A I struck him about the body. I hit him on**  
8 **the shoulders, arms. I don't recall hitting him on**  
9 **the legs.**

10 **Q Do you remember how many times you used**  
11 **your baton?**

12 **A Three, maybe four times.**

13 **Q Did any of those strikes go anywhere near**  
14 **his head?**

15 **A No.**

16 **Q Did you ever strike him in the back of the**  
17 **head?**

18 **A I never struck him in the back of the**  
19 **head.**

20 **Had I struck that gentleman in the back of**  
21 **the head, he would have went down like a ton of**  
22 **bricks.**

23 **MS. JACKSON: Objection, speculative and**  
24 **nonresponsive.**

Page 250

1 **HEARING OFFICER JOHNSON:** So you could lay  
2 a foundation, I guess, as to how he would know what  
3 would happen if he hit him in the head.

4 **BY MR. FAHY:**

5 **Q What is the -- and I know I'm referring to**  
6 **it as a baton a lot.**

7 **What is the asp? Can you describe what**  
8 **that is?**

9 **A It's a 6-inch collapsible baton. Once**  
10 **it's extended, it extends about 18 inches.**

11 **Q What is it made of?**

12 **A It's made out of metal.**

13 **Q Is it a circular metal object?**

14 **A It's a circular metal object with a metal**  
15 **ball on the end.**

16 **Q What did the person that you now know to**  
17 **be Greg Larkins do after you used the baton to get**  
18 **him under control?**

19 **A He broke loose, and he ran.**

20 **Q Where did he run?**

21 **A He ran to the second floor apartment.**

22 **Q Did you follow him?**

23 **A I attempted to.**

24 **Q And what happened as you attempted to**

Page 251

1 follow him?

2 **A Apparently, he locked the door behind him.**

3 **Q Were you able to get into the door?**

4 **A No, I was not.**

5 **Q What did you do at that point?**

6 **A At that point, I talked to my victim,**  
7 **Mr. Norman Perry, I guess is his name. I completed**  
8 **my case report. I called for a supervisor.**

9 **Q The person that you knew as Norman Perry**  
10 **on that day, is he the person who testified as**  
11 **Norman Mitchem?**

12 **A Yes.**

13 **Q Back on that day, did he give you the name**  
14 **of Norman Perry?**

15 **The Norman Perry that you're referring to,**  
16 **is he also known as Norman Mitchem?**

17 **A Yes, he is.**

18 **Q As you were speaking with him, and as you**  
19 **called for your supervisor, did you observe any**  
20 **injuries on Norman Mitchem?**

21 **A He was bleeding. He had a busted lip,**  
22 **maybe minor lacerations and bruises from being**  
23 **punched.**

24 **Q And did you document in your report that**

1 he did have minor injuries?

2 **A I do believe I did.**

3 **Q** What did you tell him or say to him?

4 **A I offered him medical assistance. I just**  
5 **asked him did he want me to call an ambulance. He**  
6 **refused. I then gave him more information. I also**  
7 **gave him domestic violence information.**

8 **HEARING OFFICER JOHNSON:** What was the  
9 first kind of information?

10 **THE WITNESS:** Warrant information. If he  
11 decided he wanted to have the offender arrested, I  
12 could take out a warrant for his arrest. And also  
13 domestic violence information.

14 **BY MR. FAHY:**

15 **Q** Did you speak with any other family  
16 members?

17 **A I spoke with an elderly gentleman, Norman,**  
18 **Senior.**

19 **Q** That would have been Norman Mitchem,  
20 Junior's father?

21 **A I do believe so.**

22 **Q** That's Mr. Perry, Senior.

23 Do you recall what Officer Sutton did  
24 after Mr. Larkins ran into the apartment?

1 reports that you needed to prepare?

2 **A Yes, I did.**

3 **Q** Did you ask him about preparing a TRR,  
4 what's commonly referred to as a TRR, a Technical  
5 Response Report?

6 **A Yes, I did. I told him that I needed to**  
7 **do a TRR.**

8 **Q** Why did you think you needed to do it?

9 **A Because I struck the offender with my**  
10 **baton.**

11 **Q** Did the sergeant agree with you?

12 **A He asked me why was it necessary. I said**  
13 **because I struck him with the baton. He said, Who**  
14 **is in custody? I said, No one. He stated to me**  
15 **that a TRR was not necessary.**

16 **Q** Did you document the force that you used  
17 in the report that you did prepare?

18 **A Yes, I did.**

19 **Q** And was that later submitted and signed  
20 off by your supervisor, Sergeant Shinn?

21 **A Yes, it was.**

22 **Q** Later in the day, when Sergeant Shinn  
23 signed off on that report, did he ever indicate to  
24 you that you needed to also do a TRR?

1 **A I can't recall. I know she disappeared.**

2 **It was determined that she actually got in**  
3 **the squad car and went to the rear looking for**  
4 **Larkins.**

5 **Q** So she was touring the area?

6 **A Yes.**

7 **Q** Did your sergeant arrive shortly after  
8 Mr. Larkins fled from the scene?

9 **A Yes, he did.**

10 **Q** And was that Sergeant Shinn?

11 **A Sergeant Shinn.**

12 **Q** And were family members still in the front  
13 area at that time?

14 **A Yes, they were.**

15 **Q** And did you speak with the sergeant?

16 **A Yes, I did.**

17 **Q** And did the family members of Mr. Mitchem  
18 also speak with the sergeant?

19 **A Yes, they did.**

20 **Q** Did you tell the sergeant what had  
21 happened?

22 **A Yes, I did.**

23 **Q** Did you ask the sergeant -- or did you  
24 have some type of conversation with regard to the

1 **A No, he did not.**

2 **MR. FAHY:** I have no further questions.

3 **CROSS-EXAMINATION**

4 **BY MS. JACKSON:**

5 **Q** Mr. Askew, I'm going to show you what was  
6 marked as Respondent's No. 4.

7 Can you indicate -- I don't think I've  
8 seen it, but can you indicate on here where you  
9 indicate in that report, can you show me in the  
10 report where you indicate your use of the asp?

11 **A RO stopped offender's attack with his**  
12 **baton, striking offender, who then fled.**

13 **Q** This is the word "baton" right there?

14 **A Yes. RO stopped offender's attack with**  
15 **his baton, striking offender, who then fled.**

16 **MS. JACKSON:** I'd like to publish this to  
17 the Board.

18 **HEARING OFFICER JOHNSON:** Can I see it?

19 **MR. FAHY:** It's not a very good copy,  
20 unfortunately.

21 **HEARING OFFICER JOHNSON:** I mean,  
22 normally, if he's testifying live, we don't take  
23 this, but you're saying it somehow impeaches him?

24 **MS. JACKSON:** No, I'm not saying that at



1 all, but/for him reading it to me, I wouldn't have  
2 even known that. So I just think that -- I think  
3 that it should be published in terms of what he's  
4 saying his documentation was.

5 **HEARING OFFICER JOHNSON:** I see where he  
6 just read from, but, I mean, what's the point of  
7 publishing it again?

8 **MS. JACKSON:** Part of it is this is the  
9 central issue of case.

10 Our contention is that he didn't fill out  
11 the appropriate paperwork. He said he filled this  
12 out in an attempt to document his use of the asp,  
13 and the Board should just at a minimum see it's a  
14 demonstrative exhibit at the very least the document  
15 he claimed memorializes his use of force.

16 The Use of Force General Order has been  
17 introduced into evidence, so at a minimum, I would  
18 just like it to be published as a demonstrative  
19 exhibit.

20 **HEARING OFFICER JOHNSON:** What's your  
21 position?

22 **MR. FAHY:** I don't know how it could be  
23 published as a demonstrative exhibit. It doesn't  
24 impeach him.

1 and decide that this word does not mean baton?

2 **MS. JACKSON:** I think the Board --

3 **HEARING OFFICER JOHNSON:** Or is there  
4 something else on here you think the Board should  
5 look at?

6 **MS. JACKSON:** I think that if the Board is  
7 going to render any decision about him drafting the  
8 TRR and/or it perhaps is mitigating that he did  
9 draft his -- I think it goes to penalty.

10 If the argument is that he did draft it,  
11 and there's a document showing that he did use his  
12 asp, I'm just saying at a minimum the Board should  
13 have the very document that he purports to say, Hey,  
14 I did tell the Department I used my asp.

15 If it's going to go to mitigating of  
16 whether he disobeyed the order, it appears based on  
17 his case-in-chief so far that he's going to point to  
18 this and say, Well, I memorialized it. I let him  
19 know in this document.

20 I just want the Board to have the document  
21 that he's talking about. That's it. It goes to  
22 penalty.

23 **HEARING OFFICER JOHNSON:** Do we have an  
24 actual complete document? It's cut off.

1 It contains language that he's just  
2 testified to that he did use -- he's referring to it  
3 in his report as a baton, not an asp, but I think  
4 it's pretty clear what a baton is. Those words are  
5 kind of interchangeable. And that he used it to  
6 stop the attack of the offender.

7 He's testified that he did not prepare a  
8 TRR report after speaking with his sergeant. His  
9 sergeant has already explained that.

10 So I guess I'm at a lost as to what it  
11 means to publish it. I mean, it's already been  
12 published. He's read it, the sentence pertaining --

13 **HEARING OFFICER JOHNSON:** Yes. I don't  
14 understand what the significance is. I mean, he did  
15 read the relevant part.

16 **MS. JACKSON:** Well, I think the  
17 significance is for the ultimate trier of fact.

18 You're able to see it here, but the Board,  
19 it will not go up for them to see, and since it's  
20 being relied upon in a significant way, the issue  
21 here is -- part of the issue is his memorialization  
22 of this use of force.

23 **HEARING OFFICER JOHNSON:** I'm not getting  
24 it. So you're saying the Board could look at this

1 **MS. JACKSON:** That's the best copies.  
2 That's all I have, as well.

3 **MR. FAHY:** The problem is even on page two  
4 some of the words in the far left are actually cut  
5 off.

6 **HEARING OFFICER JOHNSON:** Well, both, page  
7 one and two the words that he says here are sort of  
8 cut off.

9 **MR. FAHY:** I know it's a terrible copy.

10 **MS. JACKSON:** But we're also relying on  
11 this document to say, you know, to some extent I did  
12 tell the Department. That's the copy the Department  
13 has. So that's just my position on that.

14 **HEARING OFFICER JOHNSON:** I don't see the  
15 point. You're offering this, and I'm -- you know  
16 what I can do, if you want, I can put it in an  
17 excluded exhibit file. This is already marked,  
18 isn't it?

19 **MR. FAHY:** I had marked it as Respondent's  
20 Exhibit 4.

21 **HEARING OFFICER JOHNSON:** So Respondent's  
22 4 will be -- you've offered it, and I'm excluding  
23 it, and I'll keep it and put it in an excluded  
24 exhibits file.

1 So if the Board wants to look at it, if  
2 they feel that's critical, they'll have it, the same  
3 with the Court or anybody else who disagrees with  
4 me.

5 **BY MS. JACKSON:**

6 Q Mr. Aske, you indicated that since you  
7 categorized Mr. Larkins, Greg, as an assailant --  
8 well, first, let me ask this.

9 What is the basis for you categorizing him  
10 as an assailant?

11 A **He was attacking another individual.**

12 Q And you said that the options available to  
13 you were stunning blows or an impact weapon, right?

14 A **Correct.**

15 Q Prior to pulling out your baton, did you  
16 try to strike Mr. Larkins in any way?

17 A **No, I did not.**

18 Q Prior to pulling out the baton, you opted  
19 to pull his clothing in order to separate them; is  
20 that correct?

21 A **Correct.**

22 Q And that was part of your characterization  
23 of what happened before you used the baton, you were  
24 separating him by pulling his clothes?

1 Q You testified that you talked to an  
2 elderly couple, is that what you said?

3 A **No, I didn't talk to an elderly couple. I**  
4 **talked to Norman.**

5 Q So you never approached any of the family  
6 members aside from the person you characterized as a  
7 victim; is that accurate?

8 A **And Norman, Senior.**

9 Q That's the older gentleman?

10 A **The older gentleman.**

11 Q Where was he when you spoke to him?

12 A **Just around in the area. I don't know if**  
13 **he was on the porch or inside. I don't recall.**

14 Q Did you ask him to gain entrance?

15 A **I can't recall if I asked to gain**  
16 **entrance.**

17 Q Why didn't you get in your squad car and  
18 start to look for Greg?

19 A **Someone had already called for assisting**  
20 **units, and I still had paperwork to complete.**

21 Q You never issued a warrant for his arrest,  
22 did you?

23 A **No, I did not.**

24 Q You never tried to run to the back of the

1 A **Pulling at him by the body, the clothing**  
2 **around the body.**

3 Q Now, you indicated that he ran into the  
4 second floor residence, right?

5 A **Correct.**

6 Q How did you know which door led to the  
7 second floor?

8 A **The first floor door -- if you're facing**  
9 **west, there are two doors, one door south, one door**  
10 **north. And the first floor window is on the south**  
11 **side of the building.**

12 Q So you assumed that the south side door  
13 was to the first floor because there was a window  
14 there? Is that what you're saying?

15 A **A living room window, unless there's some**  
16 **perky architectural design that I don't know of.**

17 Q And so did you approach the steps to gain  
18 access to that door?

19 A **Yes, I did.**

20 Q And the family, were they standing right  
21 at the front door porch?

22 A **There were people standing around. I**  
23 **didn't see anybody standing in the doorway or**  
24 **anything.**

1 home to locate him, did you?

2 A **I tried to go through the front door. The**  
3 **front door was locked. I never went to the rear of**  
4 **the home.**

5 Q After you turned the knob and noticed it  
6 was locked, that was the extent of your pursuit of  
7 Greg; is that correct?

8 A **That was the extent of my pursuit of Greg.**

9 Q You were interviewed by OPS on June 4,  
10 2007, right?

11 A **Yes.**

12 Q And you were accompanied by counsel at  
13 that time, right?

14 A **Yes.**

15 Q And you were given administrative rights  
16 prior to the inception of your interview?

17 A **Yes.**

18 Q And you were given a list of the charges  
19 and allegations against you, right?

20 A **Yes.**

21 Q And the person who interviewed you was  
22 Investigator Maira Webb?

23 A **Yes.**

24 Q You said you had an opportunity to speak



Page 264

1 with the victim?  
2 **A Yes.**  
3 **Q Did you ask him what the fight was about?**  
4 **A No, I did not.**  
5 **Q Were you concerned about any injuries that**  
6 **might have occurred as a result of you using the**  
7 **asp?**  
8 **A Yes, I was.**  
9 **Q What did you do to follow up on that**  
10 **concern?**  
11 **A I initially called for service for**  
12 **Mr. Mitchem or Norman Perry.**  
13 **Q You didn't use the asp for Norman Perry,**  
14 **did you?**  
15 **A No, I did not.**  
16 **Q So how did you follow up on any concerns**  
17 **that you had for injuries for the person that you**  
18 **used the asp with?**  
19 **A As for Mr. Larkins? There could not have**  
20 **been concern, because I didn't know there were any**  
21 **injuries.**  
22 **Q So earlier when you stated that you were**  
23 **concerned about injuries, you were speaking about**  
24 **the victim?**

Page 265

1 **A Yes.**  
2 **Q My question is were you concerned about**  
3 **any injuries that might have been sustained from the**  
4 **person you used the asp with, Greg?**  
5 **A I could not tell if he had been injured or**  
6 **not.**  
7 **Q And my question is were you concerned**  
8 **about any injuries?**  
9 **A I could not be concerned about something I**  
10 **had no knowledge of.**  
11 **Q So you didn't think the asp would result**  
12 **in any injuries? Is that what you're saying?**  
13 **A No, I did not, if you strike the muscular**  
14 **tissue. It's designed for muscular tissue strikes,**  
15 **no breakage.**  
16 **Q And where did you strike?**  
17 **A I struck him about the body.**  
18 **Q So is your testimony that you were**  
19 **attempting to solely strike his muscles about the**  
20 **body?**  
21 **A Strike the muscular parts of his body.**  
22 **Q And when you were interviewed, you really**  
23 **couldn't recall where you struck him; is that**  
24 **correct?**

Page 266

1 **A I struck him about the body. That's**  
2 **correct.**  
3 **Q And you're not certain where it landed; is**  
4 **that also correct?**  
5 **A That is correct.**  
6 **Q So you can't positively say that you**  
7 **didn't hit him in the head; isn't that also correct?**  
8 **A I can positively say I did not hit him in**  
9 **the head. That's not part of the body.**  
10 **Q Your head isn't part of the body? Is that**  
11 **your testimony?**  
12 **A It is not part of the body. That is**  
13 **correct.**  
14  
15  
16  
17  
18  
19 [redacted, per Hearing Officer Johnson's order]  
20  
21  
22  
23  
24

Page 267

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12 **BY MS. JACKSON:**  
13 **Q Now, today, Mr. Askew, you stated that the**  
14 **reason you didn't go to pursue Greg further than**  
15 **turning the knob to the second floor is because you**  
16 **had paperwork? That was your testimony, right?**  
17 **A Officer Sutton had already taken care of**  
18 **that.**  
19 **Q That's not what you just said a second**  
20 **ago, right? You said you had paperwork?**  
21 **A I also had paperwork, but my partner, the**  
22 **officer who was assisting me, also had a job she had**  
23 **to do.**  
24 **Q When you were asked questions by your**

1 counsel, you stated that you didn't know where  
2 Officer Sutton was, that she was no longer on the  
3 scene, right?  
4 **A She was no longer on the scene, but she**  
5 **did return.**  
6 **Q** At that point, when you indicated that you  
7 didn't know where she was and that she wasn't on the  
8 scene, you didn't know where she was, right?  
9 **A No. I assumed that she went looking for**  
10 **Mr. Larkins.**  
11 **Q** And so my question to you earlier that you  
12 didn't pursue him beyond turning the knob, at that  
13 moment you didn't know where Sutton was, correct?  
14 **A No, I did not.**  
15 **Q** And when you were interviewed by OPS, you  
16 told them that you didn't go any further to pursue  
17 Larkins because the family wouldn't give you access  
18 to the second floor; isn't that correct?  
19 **A That is correct.**  
20 **HEARING OFFICER JOHNSON:** I'm sorry,  
21 because the family what?  
22 **MS. JACKSON:** Would not give access.  
23 **BY MS. JACKSON:**  
24 **Q** Now, turning your attention to the TRR

1 that you and Mr. Larkins didn't have any type of  
2 verbal exchange?  
3 **A No, we did not have any verbal exchange.**  
4 **It was conversation.**  
5 **Q** Did you tell Mr. Larkins you would get the  
6 whole squad to come down, if necessary?  
7 **A No, I did not.**  
8 **Q** Did you tell Mr. Larkins that in your  
9 household when people are told to do something, they  
10 do it?  
11 **A I had no discussion with Mr. Larkins about**  
12 **my household.**  
13 **Q** Did you say to Mr. Larkins, Why can't you  
14 be quiet like he is, and pointing to Norman?  
15 **A No, I did not.**  
16 **MS. JACKSON:** I have nothing further.  
17 **HEARING OFFICER JOHNSON:** Any redirect?  
18 **MR. FAHY:** No, I have no further  
19 questions.  
20 **HEARING OFFICER JOHNSON:** The next witness  
21 is the police officer. She's at 1:30?  
22 **MR. FAHY:** Yes.  
23 **HEARING OFFICER JOHNSON:** Why don't we  
24 reconvene at 2:00, and after that, I guess we'll do

1 report, isn't it true that Sergeant Shinn suggested  
2 that you talk to the Watch Commander regarding the  
3 necessity of drafting the TRR?  
4 **A I do not recall that.**  
5 **Q** Your testimony is that he outright told  
6 you don't do it since no one is under arrest?  
7 **A It was not necessary because we did not**  
8 **have an offender in custody.**  
9 **Q** Why didn't you follow your own mind, if in  
10 your mind you knew you needed one regardless of  
11 whether there was an arrestee or not?  
12 **A I do not make it a habit of second**  
13 **guessing my supervisors.**  
14 **Q** Even in instances when you believe your  
15 supervisor may be incorrect?  
16 **A I thought he was correct. I didn't think**  
17 **he was incorrect. That's why I referred the**  
18 **question to him.**  
19 **Q** Okay. While you were on the scene, did  
20 Mr. Larkins direct -- was he yelling at you? Did  
21 you and he communicate verbally?  
22 **A He was being loud and boisterous in**  
23 **general.**  
24 **Q** So is it the case that your testimony is

1 closings.  
2 (Luncheon recess.)  
3 **HEARING OFFICER JOHNSON:** We're back on  
4 the record in Officer Aske's case, and we have  
5 another Respondent witness, which you can swear.  
6 (Witness sworn.)  
7 **OFFICER PAMELA SUTTON,**  
8 called as a witness herein, having first been duly  
9 sworn, was examined and testified as follows:  
10 **DIRECT EXAMINATION**  
11 **BY MR. FAHY:**  
12 **Q** Ma'am, could you please introduce yourself  
13 by stating your full name and please spell your last  
14 name.  
15 **A My name is Officer Pamela Sutton,**  
16 **S-u-t-t-o-n.**  
17 **Q** How are you employed, ma'am?  
18 **A I'm a police officer in the Seventh**  
19 **District.**  
20 **Q** How long have you been a police officer?  
21 **A Twenty years.**  
22 **Q** And your current assignment is in the  
23 Seventh District?  
24 **A Yes.**

1 Q What are your duties and responsibilities  
2 at the Seventh District?  
3 A I'm a desk relief officer.  
4 Q And how long have you been doing that?  
5 A Maybe about four or five years.  
6 Q And prior to that, do you recall where you  
7 were assigned?  
8 A I worked inside on the desk, and sometime  
9 I worked on the street.  
10 Q I'm going to call your attention back to  
11 October 7, 2006.  
12 Were you assigned to the Seventh District  
13 on that particular day?  
14 A Yes.  
15 Q And were you working on the street that  
16 day?  
17 A Yes.  
18 Q I'm going to call your attention to about  
19 noon. Did you respond to a call?  
20 A Yes.  
21 Q And did that call bring you to the  
22 location of 6408 South Marshfield?  
23 A Yes.  
24 Q Could you describe what you observed when

1 Q After you got on the radio, did any other  
2 squads arrive?  
3 A Yes.  
4 Q Do you recall who arrived next, what  
5 police officer?  
6 A Officer Bruce Askew.  
7 Q And after Officer Bruce Askew arrived,  
8 what happened then?  
9 A Then he got out of the car, and we both  
10 tried to get them to stop, you know, ordering them  
11 to stop, break it up, and they continued to fight.  
12 And then we kind of got in there and moved them  
13 apart.  
14 Q So you were able to physically separate  
15 them?  
16 A Yes, for a moment.  
17 Q So after they were separated, the fight  
18 did stop?  
19 A For a moment, yes.  
20 Q And what happened after they were  
21 separated?  
22 A The bigger guy started up again. They  
23 started fighting again.  
24 Q And can you describe the bigger guy in

1 you arrived at that location?  
2 A I observed two male blacks fighting in the  
3 dirt.  
4 Q Where in relation to the house were they  
5 fighting?  
6 A Maybe about 50 feet.  
7 Q Were they in front of the house?  
8 A They were in front of the house in -- I  
9 guess it would be grass. If it wasn't grass, it was  
10 dirt.  
11 Q When you say they were fighting, can you  
12 describe what it was that you saw?  
13 A Two men fighting, a bigger guy and a  
14 smaller guy fighting.  
15 Q When you say "fighting," were they --  
16 A Punching each other.  
17 Q Now, did you do anything when you observed  
18 the fight?  
19 A I told them to stop.  
20 Q Did they respond at all?  
21 A They continued to fight.  
22 Q What did you do then?  
23 A I think I got on the radio and asked for  
24 an assist.

1 terms of his demeanor?  
2 A He seemed like somebody that had been  
3 having too much to drink, or high on something. You  
4 know, he appeared kind of strange.  
5 Q Now, this bigger guy, when the fight  
6 started again, what did you see this bigger guy  
7 doing?  
8 A He was punching this little guy, really  
9 punching him.  
10 Q Did you observe Officer Askew take any  
11 action at that point?  
12 A Yes.  
13 Q What did you observe him doing?  
14 A He got his asp, and he hit him on the leg.  
15 Q What happened after Officer Askew hit the  
16 bigger guy?  
17 A After he hit him on the leg, he jumped up  
18 and ran.  
19 Q Did you see Officer Askew hit him anywhere  
20 else? Do you recall?  
21 A I don't recall him hitting him anywhere  
22 else.  
23 Q Do you recall Officer Askew ever striking  
24 him in the head?



1 A No, because I'm thinking if he would have  
2 hit him in the head with that asp, he would have  
3 been --  
4 MS. JACKSON: Objection. This is  
5 nonresponsive and speculative.  
6 HEARING OFFICER JOHNSON: Well, unless  
7 there's some foundation, yes. Sustained.  
8 BY MR. FAHY:  
9 Q After Officer Askew used the asp to stop  
10 the bigger guy, did you see where he ran?  
11 A He ran to the back of the house.  
12 Q Did he appear to be injured in any way  
13 when he was running?  
14 A No. He just took off and ran.  
15 Q At any point after the bigger guy ran from  
16 the scene, did you make any attempts to locate him?  
17 A I got in the police car, and I drove  
18 around the back, because I figured he might have ran  
19 to the alley, because he didn't run into the house.  
20 So I drove around the alley, and I didn't see him.  
21 Q After you drove around and looked for him,  
22 did you come back to the location?  
23 A Yes.  
24 Q And was there a sergeant there at the

1 the OPS statement of Norman Perry, Senior. Number 2  
2 was the OPS statement of Greg Larkins.  
3 HEARING OFFICER JOHNSON: And 4 we've got  
4 as an excluded exhibit.  
5 MR. FAHY: That's correct.  
6 HEARING OFFICER JOHNSON: So then does  
7 Respondent rest?  
8 MR. FAHY: Yes.  
9 HEARING OFFICER JOHNSON: Any rebuttal  
10 from the City?  
11 MS. JACKSON: No. So Respondent's 1 and 2  
12 have been admitted; is that right?  
13 HEARING OFFICER JOHNSON: No. They're not  
14 offered, 1 and 2, the two OPS statements. So  
15 they're not in.  
16 So is counsel ready to do closing  
17 arguments then?  
18 MR. FAHY: Yes.  
19 MS. JACKSON: I am.  
20 Mr. Hearing Officer, Members of the Board,  
21 our contention is that the evidence before the Board  
22 as presented by the Superintendent is consistent  
23 with the charges and allegations that were filed in  
24 this case pursuant to the IPRA investigation

1 scene at that point?  
2 A Yes.  
3 Q And was Officer Askew still at the scene?  
4 A Yes.  
5 Q And did they appear to be interviewing or  
6 talking to family members?  
7 MS. JACKSON: Objection.  
8 HEARING OFFICER JOHNSON: No, overruled.  
9 THE WITNESS: They were talking. I don't  
10 know, because I don't -- I don't recall getting out  
11 of the car.  
12 MR. FAHY: I have no further questions.  
13 HEARING OFFICER JOHNSON: Cross for the  
14 Officer?  
15 MS. JACKSON: No.  
16 HEARING OFFICER JOHNSON: Thanks for  
17 coming.  
18 So that concludes the witnesses, right,  
19 for the Respondent?  
20 MR. FAHY: That's correct.  
21 HEARING OFFICER JOHNSON: And I've got  
22 Respondent's right now, just three in evidence,  
23 which is the General Orders on use of force.  
24 MR. FAHY: That's correct. Number 1 was

1 regarding the events of October 7, 2006.  
2 You've heard from the family members who  
3 were present on the scene on the day in question.  
4 And all of them testified to similar instances  
5 regarding the interaction between Mr. Greg Larkins  
6 and Mr. Bruce Askew.  
7 Everyone placed Mr. Greg Larkins at or  
8 near the location of being on the porch and/or near  
9 the entrance to the apartments and standing straight  
10 up, not in any physical altercation with Mr. Norman  
11 at the time, nor Mr. Askew, and when Mr. Askew  
12 approached Greg, Greg didn't have any instruments or  
13 any type of weapons in his hand. And there was a  
14 verbal back and forth between the two to which  
15 Mr. Askew responded to that verbal exchange with  
16 unjustified force. That is our position.  
17 And that is what we believe the evidence  
18 has shown and did show during IPRA's investigation  
19 of this matter.  
20 A Tactical Response Report is required  
21 whenever there is force that is applied to an  
22 individual, and that is explicit in 020805. And  
23 that is also, Members of the Board, as you can  
24 imagine not just for the citizen's protection, but



1 that is also for the officer's protection.

2 The Department wants documentation of an  
3 officer executing his duties, and our position is  
4 that when an officer executes his duties rightfully,  
5 he will have no issue with filling out the requisite  
6 documentation in order for his employer to support  
7 his actions. And that is a part of the policy  
8 behind this necessity to document a TRR. It  
9 protects the officer as well as the citizens, as  
10 well as the employer, the Chicago Police Department.

11 And in this instance, we have a situation  
12 where Officer Askew did not document the requisite  
13 TRR. A TRR is different than a General Offense  
14 Report.

15 A TRR requests and asks for specific  
16 information that the Department requests when  
17 officers in executing their office apply force to  
18 citizens of this city, and that documentation was  
19 not provided here.

20 And we would urge the Members of the Board  
21 to not see it as a sort of incidental,  
22 inconsequential paperwork requirement, but the  
23 necessity behind that paperwork is an important  
24 matter, and it is one that we feel when a member

1 argumentative behavior, even if it involved  
2 disrespectful language, the appropriate response is  
3 not to strike an individual with an asp, with a  
4 baton or with a metal stick, as has been described  
5 during these proceedings.

6 Respondent admitted three General Orders  
7 as Respondent's Exhibit No. 3, and he would urge  
8 this Board to consider his actions to be  
9 appropriate.

10 First, the Superintendent would urge this  
11 Board to not only consider the testimonial evidence  
12 that it has before it, but also the documentation  
13 that is provided via the stipulation, and one of  
14 those documents is the Holy Cross medical records.

15 I know that the Hearing Officer and  
16 Members of the Board are well familiar with the  
17 exception to the hearsay rule insofar as comments  
18 are made with purposes of medical treatment are  
19 considered to have significant indicia of  
20 reliability and that an individual who is seeking  
21 treatment will be honest with the treatment giver in  
22 order to ensure that they receive the medical  
23 treatment they need.

24 And in those documents that I know the

1 does not comply, it renders a substantial  
2 shortcoming their continued office, because as the  
3 police department with individuals with significant  
4 powers, such as police powers and having the ability  
5 to interact with citizens the way they do, we  
6 require our members to complete this paperwork so  
7 that they are protected, and we as an employer have  
8 documentation regarding their interactions with  
9 individuals, and in this instant we don't.

10 We have five family members who were on  
11 the location at the date and time and who testified  
12 to the best of their abilities during these  
13 proceedings.

14 Those family members testified, one  
15 specifically, Alice Larkins testified to being  
16 shocked and saying Wow at the use of force from  
17 Mr. Askew to her son, who she admitted always talks,  
18 was running off at the mouth, or words to that  
19 effect she used in describing her son's continual  
20 verbal exchange, his continual loud mouthing at some  
21 of the witnesses described it.

22 And so our contention, Mr. Hearing  
23 Officer, Members of the Board, is that responding to  
24 verbal commands, a verbal exchange, loud mouthing,

1 Board will review in taking this matter into  
2 consideration, Mr. Larkins stated, Police came and  
3 duked me up. I'm sorry. I said it wrong. He  
4 actually used curse language.

5 He said, Police came and -- excuse my  
6 expression -- fucked me up. That's on Emergency  
7 Department Triage Notes at the upper right-hand  
8 corner. That's in quotation.

9 **MR. FAHY:** Objection. It does say duked  
10 on the notes.

11 **MS. JACKSON:** D-U-K? I apologize, Duk me  
12 up.

13 **HEARING OFFICER JOHNSON:** I think it means  
14 the same thing.

15 **MS. JACKSON:** So police came and duk'd me  
16 up are in the comments on that field.

17 His chief complaints were the right  
18 shoulder, back of the head, and a knee pain. And  
19 those chief complaints, those three complaints, are  
20 consistent, Members of the Board, throughout the  
21 notes as Mr. Larkins progressed from triage to being  
22 seen by a second nurse and to seeking treatment when  
23 he was discharged.

24 You also have discharge records, Members



1 of the Board, where it indicates that he receives  
2 staples and that they were to be taken out in seven  
3 days, which is consistent with his testimony. He  
4 stated that it took about a week for his wounds to  
5 heal.

6 So, Members of the Board, as you review  
7 this case, we ask that you also take into  
8 consideration the treatment.

9 **HEARING OFFICER JOHNSON:** Can I interrupt  
10 you for one second?

11 I saw where it said seven staples under  
12 procedures. And where did you get the week, on the  
13 discharge?

14 **MS. JACKSON:** Staples out in seven days,  
15 Emergency Department Discharge and Instruction.

16 **HEARING OFFICER JOHNSON:** Emergency  
17 Department OR, is that what that is?

18 **MS. JACKSON:** If I can approach? Showing  
19 counsel. It's this document.

20 **HEARING OFFICER JOHNSON:** There they are,  
21 at the end, staples out in seven days. I see it.

22 **MS. JACKSON:** It's the very final page of  
23 Respondent's exhibit.

24 Also, on the point of the medical records,

1 Officer, you have in front of you the pictures and  
2 the photographs that were taken by Ms. Alice  
3 Larkins, the mother of Greg, shortly sometime after  
4 he returned from the hospital, which would have been  
5 the evening of October 7, 2006.

6 There, again, you can see consistent with  
7 his testimonies, he received an injury to the back  
8 of his head that necessitated medical treatment, and  
9 he received the staples and the stitches. And that  
10 was City's Exhibit No. 5.

11 And in City's Exhibit 6 you see pictures  
12 indicating the healing of those cars insofar as the  
13 evidence technician photos were taken a few days  
14 later on or near I think it's October 16th, about a  
15 week later after the incident in question.

16 And so the matter before this Board,  
17 Mr. Hearing Officer, is not a complex matter.

18 It's one where two individuals were  
19 fighting, and our contention is that Mr. Askew's --  
20 his recitation of the events didn't occur that way.

21 When he arrived to the scene, the fight  
22 had ended and there was no need for him to  
23 physically restrain Mr. Larkins, and he was upset  
24 when Mr. Larkins would not stop talking.

1 Mr. Hearing Officer, Members Of the Board, I believe  
2 at some point there was inquiry about intake of  
3 alcohol, and I will point Members of the Board to  
4 the record where under Social History, Mr. Larkins  
5 apparently indicated smoking and that he lives at  
6 home. Nowhere does it say that he is an abuser of  
7 alcohol or that he was intoxicated on the day that  
8 he sought treatment.

9 **HEARING OFFICER JOHNSON:** Where is the  
10 social history? Which page is that on?

11 **MS. JACKSON:** It's on the second page of  
12 the exhibit.

13 At the top it says History and Physical  
14 Emergency Department slash Express Care, and about  
15 halfway through the page --

16 **HEARING OFFICER JOHNSON:** Social History.  
17 Okay.

18 **MS. JACKSON:** And there it also has a  
19 location where you can circle illicit drugs, and  
20 that remains unchecked.

21 **HEARING OFFICER JOHNSON:** So he did circle  
22 ethanol.

23 **MS. JACKSON:** Smoking, and lives at home.  
24 Also, Members of the Board and Mr. Hearing

1 When Mr. Larkins, we submit, Members of  
2 the Board, questioned Askew's authority to make him  
3 to get down, and Mr. Askew's response to that  
4 questioning of his authority to the extent that  
5 Larkins stated words to the effect that, I haven't  
6 done anything, why do I have to get down, Mr. Askew  
7 didn't like him questioning his authority.

8 And you heard testimony that he said words  
9 to the effect of, When people are told to do  
10 something in my house, they do it. So Mr. Askew  
11 wanted Larkins to do what he said, and he didn't.  
12 And his disobedience of getting down in no way  
13 justifies Askew striking him with an asp.

14 Even including, Mr. Hearing Officer and  
15 Members of Board, in Respondent's Exhibit No. 3, the  
16 General Order 03-02-02, it gives the officer various  
17 options that they have in responding to individuals.  
18 And you've heard that the asp is a control  
19 instrument.

20 So even in the situation of a resister who  
21 was described as a person who was uncooperative,  
22 Item C on page two of four in General Order  
23 03-02-02, even in providing a control instrument as  
24 an avenue for the officer to restrain someone, it



1 defines it as being used as a nonimpact pressure  
2 object.

3 So our position, Members of the Board, is  
4 that in response to Larkins mouthing off, he was a  
5 resister, and he was a passive resister, and that's  
6 defined in Item B-1. He failed to comply with  
7 Askew's directions to get down. You heard that from  
8 several of the family members. He wouldn't stop  
9 talking.

10 If the option was to pull out the control  
11 instrument, in this instance the asp, then Askew's  
12 reasonable and appropriate response was to apply  
13 nonimpact pressure, not to whack him as it was  
14 described, not to him, as he admitted he did.

15 Nonimpact pressure is to amplify pain in  
16 order to increase the potential to control the  
17 subject.

18 So our contention, again, is that using  
19 the asp in the way that he even used it in response  
20 to Larkins' verbal combativeness was not  
21 appropriate.

22 And then even, Members of the Board, if  
23 you take his contention that Larkins was not a  
24 passive resister, as described in Item B-1 of that

1 talked about her challenges physically walking.

2 So it goes without saying that they  
3 weren't going to try to go up and break up a fight  
4 between individuals who are in their twenties. They  
5 called the police, and they wanted police  
6 assistance. They wanted the police to come there  
7 and help.

8 So keeping that common sense context in  
9 mind, the individuals testified to what they  
10 recalled and what they saw.

11 They admitted to their credit, Members of  
12 the Board, there was some things that they didn't  
13 recall. There was some things they did not know  
14 exactly who was situated where, near the front porch  
15 or near the property, but there were certain things  
16 that they knew that occurred on that day and that in  
17 response to Larkins, who always talks, always runs  
18 off at the mouth to anybody, and they were  
19 forthcoming about that. He does that to the family,  
20 and he did it to the officer.

21 But they were all consistent on one point.  
22 No one was fighting. Larkins didn't have any type  
23 of weapon in his hand. And the response to his  
24 verbal combative behavior was Askew striking him

1 General Order, but he was instead an active  
2 resister, as he would have you believe in opposition  
3 to five individuals who testified to similar  
4 behavior, now, Members of the Board and Hearing  
5 Officer, no one was absolutely certain and clear on  
6 many things. That goes without saying.

7 Many people, many of the five did not  
8 remember several things, but there were certain  
9 consistencies that they remembered. The two were  
10 not fighting. They remembered that.

11 And also, Members of the Board, you have  
12 to remember this was the family that called them  
13 there. They're the family. Mr. Perry wanted  
14 officers to come and separate them.

15 We can be very practical about the  
16 situation. The family members were quite a bit, as  
17 you can see in the videotape, Members of the Board,  
18 they are a lot older, and Mr. Perry talked about his  
19 health ailments.

20 He talked about the pacemaker. He talked  
21 about the cancer treatments. And as you saw in the  
22 video, he walked in with a cane. As you saw in the  
23 video, his wife needed -- she had a challenging time  
24 walking to the seat on the stand. And she also

1 with an asp in three locations throughout his body.

2 And so even if you consider that to be  
3 active restraint, which is in direct opposition to  
4 the order, the order even talks about stunning  
5 restraints that can be used with the active  
6 resister. And that in and of itself is defined as  
7 diffused pressure, striking or slapping the  
8 individual.

9 So here, Members of the Board, even in the  
10 instance where we believe, okay, fine, we don't  
11 believe the family. We believe they were still  
12 fighting. Even in that instance, you are permitted  
13 to slap the individual. You are permitted to strike  
14 the individual. And that's defined here under an  
15 active resister. But Askew didn't do that. He  
16 immediately grabbed his baton.

17 And we're not in any way, Members of the  
18 Board, conceding that they were fighting. But even  
19 if you find that to be the case, our position is  
20 still that Askew's response in pulling out the baton  
21 and striking Greg Larkins in the manner that we  
22 believe the evidence shows was unjustified.

23 And if you find that it was unjustified,  
24 then we would urge you to also find him guilty of



1 violating the statute that's codified in City's  
2 Exhibit 1.

3 And thereafter finding his memorialization  
4 of pulling out the asp in the General Case Report as  
5 insufficient, because that is not what the employer  
6 requires in documenting force that is used on  
7 citizens is necessary, even if it's force to support  
8 our employees that you fill out a TRR so then we  
9 know what you did. That's our official document  
10 that memorializes force that you used. And we as an  
11 employer will stand behind our document that you  
12 filed.

13 But you can't do it your way. You can't  
14 just say, Oh, I filed the General Case Report and  
15 that's enough, because it's not.

16 And so with that being said, Members of  
17 the Board, we just respectfully request that you  
18 uphold the discharge of Officer Askew as a result of  
19 the incident that occurred on September 7, 2006, and  
20 we thank you for your time.

21 **HEARING OFFICER JOHNSON:** Thank you.  
22 Respondent?

23 **MR. FAHY:** Thank you, Mr. Johnson and  
24 Members of the Board.

1 The evidence that we've heard at this  
2 hearing falls woefully short of sustaining any of  
3 the charges of battery or physical mistreatment by  
4 Officer Askew.

5 The evidence that was presented basically  
6 came from five family members who lived at that  
7 location. They lived there then. They've been  
8 living there for the last five and a half years  
9 together.

10 They've discussed this incident after it  
11 happened. They discussed this incident before their  
12 statements. They discussed it after their  
13 statements. They discussed it before the testimony  
14 here. They discussed it after their testimony here.

15 Even with all that practice, all that  
16 rehearsal, the versions that they gave before this  
17 Board are questionable, to say the least.

18 For one, you're dealing with a loss of  
19 memory, which was very clear from many of the  
20 witnesses with the passage of five and a half years.

21 You're also dealing with major  
22 inconsistencies in all of the versions of events.  
23 And in some instances you're dealing with people who  
24 were just being less than honest with the Board or

1 parroting their rehearsed testimony.

2 Regardless, it's appalling. It's

3 appalling that an investigation that should have  
4 been wrapped up easily within 30 days is dragged on  
5 for over five years. And the result that the  
6 Superintendent is left with is testimony that you  
7 just can't trust.

8 It's not the type of reliable testimony  
9 that would be needed to sustain the serious  
10 allegations against a police officer.

11 Alice Larkins, I mean, how many times did  
12 she have to pause and struggle to remember things?  
13 She couldn't even remember if there was a male  
14 police officer there without some serious prodding.

15 How many times did she say she was  
16 confused, it's been too long? She starts out saying  
17 she was upstairs looking out the window and sees the  
18 fight. Well, Norman Perry says, no, she wasn't up  
19 there. She wasn't there.

20 She has herself on the porch next to her  
21 son when this incident that she describes occurs.

22 Etta Larkins, the woman who lives on the  
23 first floor, says, no, she wasn't on the porch. She  
24 was out by the sidewalk near the fence, speaking

1 with another police officer.

2 And how about after the incident? Alice  
3 tells us that she went around the back and met her  
4 son coming out of the back of the building.

5 Now, that would have been a pretty good  
6 athletic fete for anyone, let alone a woman who is  
7 clearly older.

8 And she says that she saw her son and that  
9 he was bleeding from his head. Well, Greg Larkins  
10 tells us, no, that didn't happen. She didn't see  
11 me. When I ran up that apartment, I ran out the  
12 back door, and I never stopped until I got to the  
13 back gate, and the only reason why I stopped there  
14 is because I had to open it, and I ran from there.  
15 There was no one else out there.

16 And her son, who's supposed to be -- the  
17 Superintendent is trying to portray him as some type  
18 of victim in this matter, the guy who alluded the  
19 arrest, gone for several hours and comes home, and  
20 Alice tells us after he comes home after these  
21 several hours, her memory is so faded she doesn't  
22 even remember the ambulance coming to her house.

23 She doesn't remember her son going in an  
24 ambulance, when the parties have stipulated that



1 there was an ambulance. We have an ambulance report  
2 in evidence. He was picked up at his home. It's in  
3 evidence, and it documented the time as to when he  
4 was picked up. That's not very reliable evidence.

5 The same with Etta Larkins. She also says  
6 she's looking out the second floor window. Norman  
7 says, No, she wasn't. She said she was looking out  
8 the second floor window, and she is the one who  
9 tells her husband about it. Norman Perry says, No,  
10 that's not the way it happened. She wasn't there.

11 I mean, how many times did Etta say, It's  
12 been so long, it's hard to remember, or words to  
13 that effect?

14 She says she went downstairs, but  
15 according to her husband, she was never upstairs.  
16 So I don't know why she would be going down the  
17 stairs.

18 She's not sure if she was outside when the  
19 fighting was going on. She's just not sure about a  
20 lot of things, even after this collective get  
21 together of all the family members to try to  
22 rehearse this.

23 And Norman Perry, how many times, as  
24 counsel pointed out, saying he hardly remembers,

1 it's been a long time, a lot of health issues, been  
2 through a lot in the last five and a half years. He  
3 did not even remember a male police officer being  
4 there without some prodding.

5 And Norman Mitchem, no one knows what this  
6 fight was about. It's interesting. Five and a half  
7 years later you'd think you'd remember what the  
8 fight was about.

9 The only one who remembers it, why the  
10 fight started, was Norman Mitchem. He tells us it  
11 was about my haircut, and he tells us that he'd  
12 never been in a fight with his cousin Greg before,  
13 the first fight ever, and it's about his hair.

14 Well, Greg tells us now this is a common  
15 occurrence. They were going at it all the time. I  
16 mean, even with their rehearsal and the practice,  
17 they can't get these details down. It's because  
18 they don't remember this or they're just parroting  
19 the rehearsal amongst all of them.

20 How about Greg Larkins? He had to keep  
21 his statement to OPS in front of him the whole time  
22 because he was impeached on just about every single  
23 point that he told this Board.

24 And with regard to the incident itself,

1 which the way they describe this beating that Greg  
2 apparently suffered, all of them, with the exception  
3 of Greg, have this male police officer, none of them  
4 identified Officer Askew as being this officer, face  
5 to face. They describe a situation where Greg never  
6 flinches when he's being struck with this baton.

7 **MS. JACKSON:** Objection. No one testified  
8 to that, that he never flinched.

9 **HEARING OFFICER JOHNSON:** Didn't go down,  
10 I remember that.

11 **MR. FAHY:** They were consistent about him  
12 not going down either.

13 But it's interesting that at various times  
14 Etta's got him getting hit in the shoulder. They're  
15 all saying that he's face to face and he gets struck  
16 in the back of the head while they are face to face.

17 Etta has him in the doorway when this  
18 happens. Others have them on the porch. None of  
19 them say that he goes down, that he continues to  
20 face him and somehow he gets clubbed in the back of  
21 the head while he is facing a police officer, and  
22 not just once, but more than once.

23 Norman Mitchem has Greg Larkins with his  
24 hands behind the back of his head while he's being

1 clubbed. And you remember how Norman Mitchem  
2 described it? He said that the officer bent over  
3 and started on his calf and worked his way up and  
4 started clubbing him on the head when Greg had his  
5 hands on the back of his head. It doesn't make any  
6 sense.

7 But their star witness, this supposed  
8 victim himself, Greg Larkins, the guy that thinks  
9 it's funny to stand in front of a judge and admit  
10 that you're a thief.

11 **MS. JACKSON:** Objection,  
12 mischaracterization.

13 **HEARING OFFICER JOHNSON:** No, overruled.  
14 I remember he was smirking during that.

15 **MS. JACKSON:** We don't know what he  
16 thinks, if that's what he was smirking at.

17 **HEARING OFFICER JOHNSON:** This is closing  
18 argument. He's drawing inferences.

19 **MR. FAHY:** Well, Mr. Larkins, Greg  
20 Larkins, has this male police officer standing to  
21 his right side. Everyone else had him face to face.  
22 And he says he gets struck in the head four times  
23 with a metal baton. Then his right knee. Then he  
24 runs.



1 There's major inconsistencies, and those  
2 are not consistent versions of what happened here.  
3 There's major inconsistencies. There's major  
4 problems with their memory, and it all makes it  
5 unreliable.

6 It's a stretch to believe that his  
7 hospital visit more than eight hours after this is  
8 somehow connected to his interactions with Officer  
9 Askew or whatever male police officer he's  
10 describing.

11 **HEARING OFFICER JOHNSON:** So there's no  
12 question from the photos and from the Holy Cross  
13 record that he had a gash on the back of his head  
14 with the seven staples? That seems clear, although,  
15 interestingly, the ambulance report doesn't mention  
16 anything about it.

17 What is your position as to, or maybe you  
18 don't have to, if you feel you don't have to take a  
19 position, what's your position as to how he got  
20 there?

21 **MR. FAHY:** Well, there's a couple points I  
22 want to make with regard to his injuries.

23 One is anything Greg Larkins tells you is  
24 questionable at best. He's not a credible witness.

1 He disappears for eight hours going God knows where.  
2 He doesn't remember doing God knows what during  
3 those eight hours and then showing up some eight  
4 hours later and requesting to go to the hospital.

5 And he said after it happened, he didn't  
6 think it was that bad. So when he shows up eight  
7 hours later, apparently whatever happened at some  
8 point during that day was bad to where he wants to  
9 go to the hospital.

10 Now, he had just been a fight, in a fight  
11 where they are punching, rolling around on the  
12 ground. It wasn't some wrestling match, as they  
13 tried to describe where they were just kind of  
14 having a playful match out in the front of their  
15 house.

16 The police had to be called. No one else  
17 there was able to break it up, and I'm not expecting  
18 elderly people to break it up, but there were other  
19 people out there. They couldn't break it up. The  
20 first officer on the scene couldn't break it up.

21 We know Mitchem was injured. He remained  
22 on the scene. It's documented in his report. And  
23 Police Officer Askew observed injuries to his face.

24 But Larkins, he runs. He runs.

1 Apparently, he's trying to say that he was injured,  
2 but he's fine to run and make good his escape.

3 But if you look at the medical records,  
4 it's interesting because he's got three major  
5 complaints.

6 One is a right shoulder injury, which he  
7 testified that didn't occur with any interaction  
8 with this male police officer. So that wasn't  
9 caused by his interaction with the male police  
10 officer.

11 He's got swelling on his left knee. The  
12 way Larkins describes it to the Board, this male  
13 police officer is to his right side, and he struck  
14 his right knee. So, obviously, whatever injury --  
15 again, these are minor injuries. His swelling to  
16 his right knee, obviously, wasn't from any encounter  
17 with this male police officer.

18 And then last, at least a head injury.  
19 Remember what he told this Board? He told the  
20 Board -- and this is a metal circular round metal  
21 object that he was clubbed in the head four times.  
22 There's one injury to his head. One. And what type  
23 of injury is it? It's a cut. It's a gash in the  
24 back of the head.

1 If you're clubbed with a metal club, a  
2 metal baton, four times, you're going to have four  
3 injuries. And those four injuries are probably  
4 going to be the size of baseballs. But, more  
5 importantly, you're not even going to get up from  
6 that. That's how you know what he's telling you  
7 isn't true.

8 That is not the type of injury, to have a  
9 gash across the back of the head. It's not caused  
10 from a baton, from four strikes with a baton, a  
11 metal baton.

12 And as for the medical records, if you  
13 look at the triage report, I mean, counsel brought  
14 out his history, if you look at the triage notes,  
15 and you look under Medical History, alcohol abuse,  
16 when they took his medical history, is checked off.  
17 There's not a box number on that, but it's on the  
18 Emergency Department triage notes. It's checked off  
19 that he was an alcohol abuser.

20 And it's amazing that all of them --  
21 you're right. The ambulance report does not make  
22 any mention of that, and the ambulance report in  
23 this complaint is shoulder, and his knee.

24 Now, both of those injuries weren't



1 even -- apparently weren't caused by his encounter  
2 from what he described, and the cause was a fight  
3 slash beating slash brawl, no mention that any  
4 police officer did it.

5 And he gets there, and he says the police  
6 came and duk'd me up. And that's the only time he  
7 says that is at the emergency room, and that's over  
8 eight hours after this incident.

9 It's clear that this injury was not caused  
10 from the baton, because common sense tells us that  
11 that's not the type of injury you are going to have  
12 from a baton. And when you have a delayed outcry  
13 like that of over eight hours, it's just not  
14 reliable evidence.

15 And then you have to consider the other  
16 testimony that you heard from the sergeant in this  
17 case. The sergeant spoke with two of the family  
18 members who testified here. He doesn't recall their  
19 names, but he remembers them being the parents of  
20 the victim. The victim is Norman Mitchem. I know I  
21 keep misstating his name. He's also known as Norman  
22 Perry. But Norman Mitchem is what he's been called  
23 through this hearing.

24 And he speaks with the parents of those

1 two people, and they tell him what they saw. And  
2 they had no complaints about the actions of Officer  
3 Askew, and they never said anything even remotely  
4 close to what they testified to here today.

5 They testified, yes, he used his asp to  
6 break up the fight, and he hit him in the lower  
7 body. And they had absolutely no complaints about  
8 it. So, now, that's right after the incident.

9 And then some eight hours later, or nine  
10 hours later, when he shows up at the hospital and  
11 says the police duk'd me up, and he just starts  
12 running with it, I don't know exactly how it  
13 happens. I don't know how he got the cut. I  
14 suppose if you're fighting long enough and you're  
15 rolling around on the ground and punching away and  
16 hitting the ground, you could hit your head a lot of  
17 different ways.

18 But it sure doesn't make sense that four  
19 baton strikes to the head caused a cut to the back  
20 of the head. You would have baseball sized lumps,  
21 if you were ever able to get up.

22 No one in the family had any complaints on  
23 the scene after this incident about any actions that  
24 the police officer used.

1 None of their witnesses ever identified  
2 Officer Askew as being the person that perpetrated  
3 this beating. None of them.

4 I mean, if this were a civil trial or a  
5 criminal trial, this thing gets punted out in half  
6 time.

7 **MS. JACKSON:** Objection.

8 **HEARING OFFICER JOHNSON:** Greg --

9 **MR. FAHY:** Yes. He said that's him over  
10 there. And he also told OPS that he couldn't  
11 identify the right officer. He couldn't recognize  
12 him. He didn't have his glasses on. And he's  
13 points to him. But when he's describing the  
14 incident, he's talking about a male police officer.  
15 So to say it's a shaky identification is to say the  
16 least.

17 But Officer Askew has no problems with the  
18 force he used, and neither did his supervisor, and  
19 neither did the other officer who was on the scene.  
20 I mean, the force he used was justified.

21 **HEARING OFFICER JOHNSON:** But the  
22 identification, I mean, I understand --

23 **MR. FAHY:** It's just a point.

24 **HEARING OFFICER JOHNSON:** -- it's not

1 really an issue.

2 **MS. JACKSON:** Right.

3 **MR. FAHY:** It's not an issue, because it's  
4 a hearing.

5 **HEARING OFFICER JOHNSON:** Right.

6 **MR. FAHY:** I mean, he's saying it. So  
7 it's, again, with the passage of time.

8 I mean, here we are five and a half years  
9 later. We're relying on some very, very shaky  
10 memories. And I'm not saying it's just the  
11 Superintendent's case.

12 Officer Sutton, she doesn't remember this  
13 like it happened yesterday. And probably the reason  
14 why she remembers it most is because she doesn't  
15 work on the street very often, because this wasn't a  
16 very significant incident in any police career.

17 But with regard to the use of force,  
18 clearly it's based upon reasonableness, and the  
19 Board has the orders, General Orders, and you can  
20 use force to defend yourself or to defend another.

21 And at the point that he is attacking, and  
22 that's corroborated by Officer Sutton, he is  
23 attacking Mr. Mitchem. He is not a resister at that  
24 point. He's an assailant. He is pummeling him. He



1 is punching him. You can step in. You can use  
2 force. Mr. Mitchem was being attacked at that  
3 point. You can use an impact weapon.

4 And it makes complete sense that the way  
5 he used it was completely proper, because if he hit  
6 him in the head, he wouldn't have gotten up. He  
7 wouldn't have run away, let alone four strikes to  
8 the head.

9 And as I've already said -- I mean, this  
10 is all corroborated by Sergeant Shinn. And there  
11 wasn't any kind of, like, concealing the force he  
12 used or concern about the force he used.

13 He radioed for a sergeant. He used his  
14 asp. He's reporting it to his sergeant. He's  
15 asking the sergeant, Hey, I need to do a TRR, don't  
16 I? No, you don't. You don't have anyone in custody  
17 here. There's no reason to do a TRR.

18 He's not trying to hide it. It's not like  
19 he's trying to avoid the paperwork so that, you  
20 know, maybe no one will find out about this.

21 He documents it in the General Offense  
22 Case Report that he prepared that he used a baton.  
23 And I don't recall the exact language, but it's in  
24 the record. But it was read in the record as to

1 And it's at that point that Officer Aske  
2 uses the asp to stop the attack, a completely  
3 justified use of force.

4 Larkins flees. He makes good his escape.  
5 She does look. She tours the area and looks for  
6 him. She gets back. The sergeant is on the scene.  
7 Officer Aske is on the scene. They're still doing  
8 investigation, talking to the witnesses. She was  
9 there.

10 I mean, it was Officer Aske who was  
11 actually doing the report on it. It wasn't really  
12 her job, so to say, but she just happened to be the  
13 first one on the scene.

14 Mr. Hearing Officer, Members of the Board,  
15 this case that's been presented here for a lot of  
16 reasons which I've tried to highlight here is not  
17 that type of evidence that you can trust to sustain  
18 the findings on the batteries or the maltreatments.

19 And with regard to the TRR, I mean,  
20 Officer Aske believed he had to do it. He spoke to  
21 a superior officer about it. The superior officer  
22 takes responsibility. He knows he should have had  
23 him do it now, but at the time he didn't think he  
24 had to do it because the guy wasn't in custody.

1 what he said in his report. He called the  
2 supervisor.

3 He discussed doing the TRR, because he  
4 told the supervisor. Officer Aske said he believed  
5 he had to do a TRR.

6 It's the sergeant. And he admits that he  
7 wasn't clear. He didn't think he had to do one  
8 because of the fact that they didn't have anyone in  
9 custody.

10 You know, this notion that the boys  
11 stopped the rumble once Officer Sutton arrives on  
12 the scene is completely blown out of the water by  
13 Officer Sutton.

14 I mean, she described for you what  
15 happened when she arrived. It's a fight. It's a  
16 full blown rumble. They're out there in the dirt.  
17 They're punching each other. She completely  
18 contradicts Mr. Mitchem and Mr. Larkins. She was  
19 not going to and could not break it up herself.

20 She gets back on the radio to get more  
21 help, and Officer Aske arrives. They were able to  
22 separate them initially, she recalls that. Larkins  
23 just right back at it, and he's pummeling his  
24 cousin, Mr. Mitchem.

1 What's important about that is he does  
2 document the use of force. He does notify his  
3 supervisor, and he was in no way trying to conceal  
4 it.

5 But even with regard to the battery  
6 charges and the maltreatment charges, the evidence  
7 that you heard consisted of those five family  
8 members. And here we are, five and a half years  
9 later, and their testimony just can't be trusted.

10 It's just not the type of reliable testimony that  
11 you need to rely upon to find someone guilty or to  
12 sustain a serious allegation such as the ones that  
13 are before the Board against a police officer.

14 Officer Aske's actions were completely  
15 appropriate. The injuries that Mr. Larkins  
16 sustained were three. Two of them, he admits,  
17 couldn't have been caused by a police officer. The  
18 third one makes no sense, a gash to the back of the  
19 head, a cut to the back of the head from four  
20 strikes with a metal baton. It makes no sense.

21 This is not the type of reliable evidence  
22 that you could use to find someone guilty of these  
23 charges. I would ask that you find him not guilty  
24 of all of them and let him be reinstated to the



Police Department.

**HEARING OFFICER JOHNSON:** Thank you.  
Rebuttal?

**MR. FAHY:** No.

**HEARING OFFICER JOHNSON:** We do have a  
briefing schedule on this one, on the motion?

**MR. FAHY:** Yes.

**HEARING OFFICER JOHNSON:** We have this  
delay issue in a lot of different cases.

The first time I saw it was that case  
where we had a lot of videotape of the officers in  
the Taco Burrito. We really knew what happened  
based on the videotape, even though there was a long  
delay in the case. There was the videotape and  
relatively prompt statements.

I could see the Board -- and the only  
reason I say this is because when I present the case  
to the Board that I have to answer questions, and I  
always like it if you can answer the questions and I  
can point to what you said.

But I think when you write your brief in  
this case, unlike the others that we've had with  
delay, the effect of the delay is more tangible  
here.

1 delay, but I'm just throwing that out there for what  
2 it's worth. So with that, then, thank you very  
3 much. I appreciate it.

4 We'll take it under advisement. Once we  
5 get the briefs, that will go to the Board, too, on  
6 the motion.

7 **MR. FAHY:** Thank you.

8 **MS. JACKSON:** Thank you.

9 (WHICH WERE ALL THE PROCEEDINGS  
10 HAD IN THE ABOVE-ENTITLED CAUSE  
11 ON THIS DATE AND TIME.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 And I would think that you as the  
2 Corporation Counsel would be the most perturbed by  
3 the delay because it puts you in a tough spot.

4 Here you have elderly people being asked  
5 to come in here five and a half years later where --  
6 I mean, I remember that Norman, Junior, his  
7 statement is from, like, 2009, and I don't know if  
8 there's other statements they took earlier than  
9 that. It's hard for me to know, because I don't see  
10 the statements.

11 But I think in this one -- and Norman,  
12 Senior saying, I really don't remember anything,  
13 that makes life very hard for you. And I think it  
14 might be well for the City to make some kind of  
15 explanation here about why the case took five and a  
16 half years, if there's some reason, because I could  
17 see the Board saying, Well, these people are honest.  
18 They're trying their hardest. But it's hard to  
19 produce really convincing, detailed testimony when  
20 you're called that far down the road.

21 I'm not saying that that's the way they're  
22 going to come out, but I think maybe this time there  
23 needs to be some kind of explanation.

24 I know there's legal defenses to the

1 STATE OF ILLINOIS )  
2 COUNTY OF C O O K ) SS.  
3

4 DANIEL M. PRISCU hereby certifies that he  
5 reported in shorthand the proceedings in the  
6 above-entitled matter and that the foregoing is a  
7 true and correct transcript of said proceedings.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Certified Shorthand Reporter

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

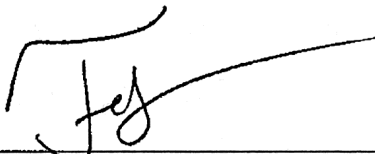
IN THE MATTER OF CHARGES FILED AGAINST )  
POLICE OFFICER BRUCE ASKEW, ) No. 11 PB 2776  
STAR No. 9015, DEPARTMENT OF POLICE, )  
CITY OF CHICAGO, )  
RESPONDENT. )

**ORDER**

This matter having come before the Police Board of the City of Chicago for consideration of the Respondent's Motion to Strike and Dismiss and of the merits of the case, the Police Board hereby orders the parties to file simultaneous briefs, no later than fourteen (14) days from the date of this Order, addressing the applicability of the five-year statute of limitations established in 65 ILCS 5/10-1-18.1 to this case.

After receiving these briefs, the Police Board will further consider this matter.

Enter:

  
\_\_\_\_\_  
THOMAS E. JOHNSON  
Hearing Officer

Date: March 16, 2012

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS  
POLICE BOARD OF THE CITY OF CHICAGO

IN RE:

)  
)  
)  
)  
)  
)

No. 11 PB 2776

BRUCE ASKEW,

RESPONDENT

**RECEIVED**

MAR 30 2012

**Police Board  
City of Chicago**

**SUPPLEMENTAL MOTION TO STRIKE AND DISMISS**

NOW COMES the Respondent, Bruce Askew, by his attorney, William N. Fahy, and moves to strike and dismiss the charges filed against Respondent pursuant to the five year statute of limitations established in 65 ILCS 5/10-1-18.1. In support of this motion it is stated as follows:

**INTRODUCTION**

This case arises out of an incident that took place on October 7, 2006 at 6408 S. Marshfield in Chicago, Illinois. While on-duty Officer Askew responded to a call of a domestic disturbance. Upon arrival at the scene Officer Askew observed two individuals, Greg Larkins and Norman Mitchem, engaged in a fight. Officer Askew was able to separate the two men. After being separated, Mr. Larkins again went after Mr. Mitchem and began beating him. At this point Officer Askew attempted to arrest Mr. Larkins. Mr. Larkins refused to obey the commands of Officer Askew and continued beating Mr. Mitchem. Officer Askew used his baton in an attempt to subdue Mr. Larkins and place him under arrest. Mr. Larkins was able to elude the arrest and successfully fled the scene.

Several hours later, Mr. Larkins called for an ambulance and was taken to Holy Cross Hospital. There, he complained of injuries that he claimed were the result of his contact with



police officers earlier that day. The police were notified and on October 8, 2006, a complaint was registered on behalf of Mr. Larkins. The Office of Professional Standards (OPS) was notified and immediately began investigating. During the months of October and November of 2006, multiple witnesses were interviewed by OPS. No further significant activity occurred in the investigation until May and June of 2007, when statements were taken of the two police officers on the scene, Officer Pamela Sutton and the Respondent, Officer Askew.

In March 2008, the OPS Investigator's activity log indicates that this case was closed in March 2008. However, it was then re-opened to take the statement of Sgt. Shinn. (See Exhibit 1, Activity Log) After Sgt. Shinn's statement was taken in May 2008, the case was again closed. No charges were filed in 2008.

The investigation was re-opened in May 2008. Nothing of any significance occurred in the investigation over the next **2 years and 7 months** until the investigation was officially closed in January 2011. No charges were filed in 2009 or 2010. On November 3, 2011, **5 years and 1 month after the incident**, the Respondent was served with charges in this case.

All charges against this Respondent must be stricken and dismissed for failure to bring them in a timely manner.

### **ARGUMENT**

#### **THE FAILURE TO BRING TIMELY CHARGES VIOLATES THE FIVE YEAR STATUTE OF LIMITATIONS ESTABLISHED IN 65 ILCS 5/10-1-18.1**

The Illinois Municipal Code 65 ILCS 5/10-1-18.1(b) states requirements for the timing in which charges must be brought against an Officer for allegations of unreasonable force. The statute clearly states "If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within 5 years after the commission of the act upon which the charge is based." Illinois Municipal Code, 65 ILCS 5/10-1-18.1(b). The

Complainant in this case, Mr. Larkins, alleged Respondent used excessive force when Respondent attempted to arrest him on October 7, 2006. Mr. Larkins subsequently filed his complaint on October 8, 2006 and OPS began their investigation on the same date. As such, the date of commission of the alleged act was October 7, 2006. Accordingly, the last day to file charges was October 7, 2011. No charges in this case were filed before the five year statute of limitations ran. Charges were filed against Respondent on November 3, 2011, **more than five years** from alleged commission of the act (as well as the date that OPS began their investigation) of the incident. Filing charges on November 3, 2011, violated the five year statute of limitations, because the statute of limitations had run in the case and therefore the charges against Respondent should be dismissed.

If this Board finds that the statute of limitations did not run, a point which we do not concede, the charges still warrant dismissal, as argued in the initial brief, based on the due process, City of Chicago ordinance, and administrative procedure violations of the City in its ridiculously lengthy delay in filing charges against Respondent.

**WHEREFORE** for the foregoing reasons it is respectfully requested that the charges filed against the Respondent be stricken and this case be dismissed.

Respectfully submitted,



William N. Fahy

Law Office of William N. Fahy, Ltd.  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
(312) 655-1100  
Attorney No: 37812

**RECEIVED**

MAR 30 2012

**BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO**

**Police Board  
City of Chicago**

**IN THE MATTER OF CHARGES            )**  
**AGAINST                                    )**  
**Police Officer Bruce Askew,            )**     **11 PB 2776**  
**Respondent.                                )**     ***Hearing Officer Thomas Johnson***

**SUPERINTENDENT MCCARTHY'S RESPONSE TO THE  
CHICAGO POLICE BOARD'S MARCH 16, 2012 ORDER**

Garry McCarthy, Superintendent of Police for the Chicago Police Department, by and through his attorney Stephen R. Patton, Corporation Counsel of the City of Chicago, submits the following in response to the Chicago Police Board's ("Board") March 16, 2012 Order.

On March 16, 2012, the Board issued an Order directing the parties to file simultaneous briefs addressing the applicability of the five-year statute of limitations established in 65 ILCS 5/10-1-18.1.

Section 10-1-18.1 of the Illinois Municipal Code, 65 Ill. Comp. Stat. 5/10-1-18.1 (2010), and Chapter 2-84 of the Chicago Municipal Code, Mun. Code of Chicago sec. 2-84-020 et seq. (1990), grant the Police Board the power to remove, discharge or suspend employees. Regarding the filing of charges before this Board, Section 10-1-18.1 of the Illinois Compiled Statute states the following in pertinent part:

Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held. If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within 5 years after the commission of the act upon which the charge is based. The statute of limitations established in this Section 10-1-18.1 shall apply only to acts of unreasonable force occurring on or after the effective date of this amendatory Act of 1992.

65 ILCS 5/10-1-18.1. For the reasons set forth below, the Superintendent maintains that the statute of limitations provided for in Section 10-1-18.1 does not apply to the City of Chicago. The City of Chicago ("City") and the Fraternal Order of Police, Lodge No. 7 ("FOP"), the sole bargaining representative of Chicago Police Officers, negotiated the terms of a collective bargaining agreement which grants the Superintendent the authority to act on complaints more than five years old and to review matters outside the five-year deadline provided in Section 10-1-18.1.

Illinois Courts have long recognized the authority of home rule units to establish requirements different from those established in division 1. Dineen et al., v. City of Chicago, 125 Ill. 2d 248, 257 (1988) (citing Peters v. City of Springfield, 57 Ill. 2d 142 (1974)). See Exhibit A attached hereto for a copy of Dineen et al., v. City of Chicago, 125 Ill. 2d 248, 257 (1988). "It is well settled that the home rule provisions of the Illinois Constitution (Ill.Const.170, art VII, s 6) allows a home rule municipality to enact an ordinance that supersedes a conflicting state statute passed prior to the effective date of the 1970 Constitution." Resman v. Personnel Bd. of the City of Chicago, 96 Ill. App. 3d 919, 922 (1<sup>st</sup> Dist. 1981) (citing e.g., Stryker v. Village of Oak Park, 62 Ill. 2d 523 (1976); Scott v. Rochford, 66 Ill. App. 3d 338, 341 (1978)). See Exhibit B attached hereto for a copy of Resman v. Personnel Bd. of the City of Chicago, 96 Ill. App. 3d 919 (1<sup>st</sup> Dist. 1981). Division 1 provides a civil service system for those municipalities that choose to adopt its provision. Dineen et al., 125 Ill. 2d at 254 (citing Ill.Rev.Stat. 1985, ch. 24., par.10-1-43); Bovinet v. City of Mascoutah, 55 Ill. 2d 129, 131 (1973)). The City had the authority to replace the civil service provision of the Illinois Municipal Code with its own personnel ordinance. And the City did supplant the Illinois legislature's



personnel scheme with its own when the Chicago City Council ("City Council") enacted Chapter 25.1 of the Chicago Municipal Code in 1976; thereby replacing the State act.

In 1981, the City Council repealed the 1976 personnel ordinance and replaced it with a new one, which like the 1976 personnel ordinance, applied to all employees in city service, including police officers, except officers above the rank of captain. Chicago Municipal Code § 25.1 (1981); see also Dineen, 125 Ill. 2d at 257. Section 25.1-13 of the 1981 Chicago Municipal Ordinance provided:

This Ordinance shall not apply nor have any effect upon the Police Board, its manner of selection, composition, or its powers and duties as set forth in Section 11-2 and Section 11-3 of this Code and Section 3-7-3.1, *Section 10-1-18.1, and Section 10-1-45 of the Illinois Municipal Code*. Nor shall this ordinance have any effect upon the selection, powers or duties of the Superintendent of Police as set forth in the Municipal Code of the City of Chicago and Section 3-7-3.2 of the Illinois Municipal Code.

Chicago Municipal Code § 25.1 (1981) (emphasis added). Therefore, although Chicago is a home rule unit, under the City's personnel ordinance, absent other circumstances, the Police Board remains subject to Section 10-1-18.1. The City's most recent personnel ordinance remains essentially the same as its 1981 predecessor. It states the following in pertinent part:

This Ordinance shall not apply nor have any effect upon the police board, its manner of selection, composition, or its powers and duties as set forth in Section 2-84-020 and 2-84-030 of this code and Section 3-7-3.1, Section 10-1-18.1 and Section 10-1-45 of the Illinois Municipal Code. Nor shall this ordinance have any Nor shall this ordinance have any effect upon the selection, powers or duties of the Superintendent of Police as set forth in the Municipal Code of the City of Chicago and Section 3-7-3.2 of the Illinois Municipal Code.

Chicago Municipal Code 2-74-130. However, when the City Council enacted its own personnel ordinance in 1976 and in 1981, Section 10-1-18.1 did not exist in its present form. The Illinois statute did not contain the five-year statute of limitation as it does

today. The Illinois legislature amended Section 10-1-18.1 to include the five-year statute of limitation in 1992.

Shortly after the state legislature amended Section 10-1-18.1 to include the five-year statute of limitations, the City and FOP made an agreement as provided for by Section 6.1(D), titled *Bill of Rights*, of the collective bargaining agreement (“CBA” or “Contract”) which states that the Superintendent can act on complaints more than five years old. Section 6.1(D) provides the following in pertinent part:

D. Unless the Superintendent of Police specifically authorizes in writing, no complaint or allegation of any misconduct concerning any incident or event which occurred five (5) years prior to the date the complaint or allegation became known to the Department shall be made the subject of a Complaint Register investigation or be re-opened or reinvestigated after five (5) years from the date the CR# was issued.

Section 6.1(D) of the CBA. See Exhibit C attached hereto for a copy of Article 6 of the CBA. This right was negotiated by the parties in response to the General Assembly’s enactment of the five-year statute of limitations at issue. The Contract that first included this provision appeared in the 1995-1999 CBA and was ratified by City Council in September 1996. This same provision is included in the most recent CBA. See Exhibit C. The plain language of Section 6.1(D) gives the Superintendent the authority to act on complaints and allegations that occurred more than five years from the date the incident or event in question or allegation became known to the Department. This provision was negotiated, bargained for, and agreed upon by the parties and consequently the Superintendent urges this Board and/or its hearing officer to not impose its own notions of “industrial justice” or to otherwise amend the terms agreed upon by both the City and FOP. See Steelworkers v. Enterprise Wheel, 363 U.S. 593 (1960) (holding that an arbitrator’s authority extends only to interpreting and applying the terms of the CBA as

s/he is not authorized to ignore the parties' negotiated agreement in order to impose his own notions of industrial justice). Accordingly, since Section 6.1(D) authorizes the Superintendent to act on complaints more than five years old, it is only reasonable to conclude that the Superintendent can take remedial measures regarding those complaints. One such measure includes filing charges before this Board.

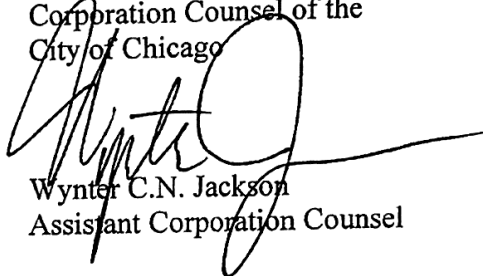
Here, the Superintendent learned about Askew's actions shortly after the incident in question which occurred on October 7, 2006. Section 6.1(D) allowed the Superintendent to specifically request to take action on this matter and he did so in on or about November 1, 2011, when he caused the charges in the instant matter to be filed before this Board.

For all the above reasons set forth above, and any additional reasons that the Superintendent may raise during a hearing on this Board's March 16, 2012, Order, the Superintendent respectfully submits that Section 10-1-18.1 does not apply to the City of Chicago and requests this Board find the same and for any other relief the Board deems just.

Respectfully submitted,

STEPHEN R. PATTON  
Corporation Counsel of the  
City of Chicago

By:

  
Wynter C.N. Jackson  
Assistant Corporation Counsel

30 North LaSalle Street  
Suite 1040  
Chicago, Illinois 60602  
(312) 742-7049(v)



Westlaw.

531 N.E.2d 347  
125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
(Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 1

**H**

Supreme Court of Illinois.  
John M. DINEEN et al., Appellants,  
v.  
The CITY OF CHICAGO et al., Appellees.

No. 64906.  
Nov. 21, 1988.

Police officers and police union filed complaint for declaratory and injunctive relief, challenging ordinance provision requiring police officers to take unpaid leaves of absence upon becoming candidates for public office. The Circuit Court, Cook County, Joseph M. Wosik, J., entered order declaring provision invalid. Defendants appealed. The Appellate Court, 152 Ill.App.3d 90, 105 Ill.Dec. 275, 504 N.E.2d 144, reversed. On plaintiffs' petition for leave to appeal, the Supreme Court, Miller, J., held that: (1) preemption provision applicable to the Illinois Municipal Code did not preclude city from restricting political activities of police officers, and (2) plaintiffs waived argument which posed an alternative theory of the case, when they failed to raise argument in courts below, and did not raise argument in petition for leave to appeal, waiting until initial brief to assert question.

Affirmed.

West Headnotes

**[1] Municipal Corporations 268 ¶67(1)**

268 Municipal Corporations  
268III Legislative Control of Municipal Acts, Rights, and Liabilities  
268k67 Appointment and Removal of Officers  
268k67(1) k. In General. Most Cited Cases  
Preemption provision applicable to the municipal code does not preclude all home rule units from restricting the political activities of their em-

ployees; the provision affects only those home rule units adopting sections of the code supplying a civil service system and establishing a board of fire and police commissioners for those municipalities that choose to adopt them. P.A. 84-1018, § 3; S.H.A. ch. 24, ¶¶ 10-1-43, 10-2.1-1.

**[2] Appeal and Error 30 ¶169**

30 Appeal and Error  
30V Presentation and Reservation in Lower Court of Grounds of Review  
30V(A) Issues and Questions in Lower Court  
80k169 Necessity of Presentation in General. Most Cited Cases

**Appeal and Error 30 ¶362(1)**

30 Appeal and Error  
30VII Transfer of Cause  
30VII(B) Petition or Prayer, Allowance, and Certificate or Affidavit  
30k362 Specification of Errors  
30k362(1) k. Necessity. Most Cited Cases

Appellants waived argument for purposes of proceedings in the Supreme Court, where they failed to raise argument in courts below, and did not raise argument in their petition for leave to appeal, waiting until their initial brief to assert argument, which represented an alternate theory of the case.

**\*\*347 \*251 \*\*\*52** Marvin Gittler, Joel A. D'Alba, Lester Asher and Reed Lee, of Chicago (Asher, Pavalon, Gittler & Greenfield, Ltd., of counsel), for appellants.

Judson H. Miner, Corporation Counsel, of Chicago (Ruth M. Moscovitch and Sharon Baldwin, of counsel), for appellees.

Justice MILLER delivered the opinion of the court:  
This is an action for declaratory and injunctive

531 N.E.2d 347  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
 (Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 2

relief challenging a requirement of the Chicago police department that officers take unpaid leaves of absence upon becoming candidates for public office. In their complaint, the plaintiffs contended that a recently enacted State statute preempted and invalidated the police department's leave-of-absence rule. The circuit court of Cook County agreed with the plaintiffs, striking down the rule and enjoining its enforcement. The appellate court reversed, holding that the State law had no effect on the department's rule. (152 Ill.App.3d 90, 105 Ill.Dec. 275, 504 N.E.2d 144.) We allowed the plaintiffs' petition for leave to appeal (107 Ill.2d R. 315(a)), and we now affirm the judgment of the appellate court.

The present action was brought by Lodge 7 of the Fraternal Order of Police, Lodge 7 president John M. Dineen, and police officers George Gottlieb and George J. Preski; Lodge 7 serves as the exclusive bargaining representative for those Chicago police officers who serve in positions below the rank of sergeant. In existence at the time the action was brought was a collective-bargaining agreement between Lodge 7 and the City, and the city council had adopted the agreement as an ordinance. \*252 Section 10.3 of the agreement provided, in part, "Any officer who runs for political office shall take a leave of absence upon the filing of the petition for office pursuant to the Employer's regular leave \*\*\*348 \*\*\*53 of absence policy"; leaves of absence are without pay. It came to the attention of the police department that Officers Gottlieb and Preski were candidates for public office, and each of them received a letter dated January 13, 1986, from the deputy superintendent of police regarding the department's leave-of-absence requirement for political candidates. The deputy superintendent advised Officers Gottlieb and Preski to apply for a leave of absence by January 22, 1986, in accordance with the department's rule or face disciplinary action.

Rather than comply with the leave-of-absence rule, the plaintiffs filed the instant complaint for declaratory and injunctive relief on January 22, 1986.

Named as defendants in the action were the City of Chicago, its mayor, and the superintendent and deputy superintendent of the police department. In their complaint the plaintiffs contended that the police department's leave-of-absence requirement for police officers running for political office could not stand in light of a recently enacted State statute. The plaintiffs believed that the new law superseded and invalidated such restrictions imposed by home rule units of local government, like the City of Chicago, on the political activities of their employees, and the plaintiffs asked that the police department's rule be declared invalid and that the defendants be enjoined from enforcing it. The plaintiffs prosecuted the action on their own behalf and as representatives of their bargaining unit. At an early stage in the proceedings Officer Preski, having ended his political candidacy, withdrew as a plaintiff.

The new law relied on by the plaintiffs was Public Act 84-1018, which took effect on October 30, 1985, \*253 when the General Assembly voted to override the Governor's veto of the legislation. Public Act 84-1018 amended article 10, divisions 1 and 2.1, of the Illinois Municipal Code (see Ill.Rev.Stat.1985, ch. 24, pars. 10-1-1 through 10-1-48; ch. 24, pars. 10-2.1-1 through 10-2.1-30) and "An Act in relation to fire protection districts" (see Ill.Rev.Stat.1985, ch. 127 1/2, pars. 21 through 38.6) (the Fire Protection District Act) by adding to them provisions prohibiting public bodies covered under those statutes from restricting the political activities of their employees. Public Act 84-1018 also contained a separate provision preempting inconsistent activity by home rule units of local government. The preemption provision denied to home rule units the power to act inconsistently with the act and declared that "all existing laws and ordinances which are inconsistent with this Act are hereby superseded."

It was the plaintiffs' theory in the circuit court that the preemptive force of Public Act 84-1018 was not limited to municipalities covered under art-

531 N.E.2d 347  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
 (Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 3

icle 10, divisions 1 or 2.1, of the Illinois Municipal Code and to fire protection districts. Rather, the plaintiffs believed that the preemption provision applied to all home rule units in the State and invalidated all restrictions imposed by the home rule units on the political activities of their employees. The trial judge initially granted the plaintiffs' request for a temporary restraining order barring the defendants from enforcing the police department's leave-of-absence requirement. Later, following a hearing, the trial judge accepted the plaintiffs' interpretation of the intended scope of the act. Concluding that the preemption provision in the act operated to supersede and invalidate the leave-of-absence requirement, the trial judge declared the rule invalid and enjoined its enforcement.

The defendants appealed the circuit court's decision. The appellate court reversed, ruling that Public Act 84-1018 \*254 did not apply to the City of Chicago and therefore had no effect on the police department's leave-of-absence requirement for police officers running for political office. Under the appellate court's construction, the preemption provision of Public Act 84-1018 affected only municipalities covered under division 1 or division 2.1 of article 10 of the Illinois Municipal Code and fire protection districts. The appellate court found that the City did not operate under any of those provisions—a conclusion that the plaintiffs did not at that time dispute—and the court accordingly held that Public Act \*\*349 \*\*\*54 84-1018 did not invalidate the department's leave-of-absence requirement.

Public Act 84-1018 consisted of four sections. Section 1 of the public act text added sections 10-1-27.1 and 10-2.1-5.1 to article 10, divisions 1 and 2.1, respectively, of the Illinois Municipal Code. (Ill.Rev.Stat.1985, ch. 24, pars. 10-1-27.1, 10-2.1-5.1.) Division 1 supplies a civil service system for those municipalities that choose to adopt its provisions (see Ill.Rev.Stat.1985, ch. 24, par. 10-1-43); division 2.1 establishes a board of fire and police commissioners for those municipalities that choose to adopt the division or that are re-

quired to operate under it (see Ill.Rev.Stat.1985, ch. 24, par. 10-2.1-1; see also *Bovinet v. City of Mascoutah* (1973), 55 Ill.2d 129, 131, 302 N.E.2d 313). Section 2 of the public act text added section 37.16a to the Fire Protection District Act (Ill.Rev.Stat.1985, ch. 127, par. 37.16a). The Fire Protection District Act permits the creation of fire protection districts in this State and applies to districts organized under its provisions.

The new provisions added by Public Act 84-1018 to the Municipal Code and the Fire Protection District Act are identical in all material respects. Section 10-1-27.1 of the Municipal Code provides:

\*255 “No municipality covered under this Division 1 may make or enforce any rule or ordinance which will in any way inhibit or prohibit any employee from exercising his full political rights to engage in political activities, including the right to petition, make speeches, campaign door to door, and to run for public office, so long as the employee does not use his official position to coerce or influence others and does not engage in these activities while he is at work on duty.” (Ill.Rev.Stat.1985, ch. 24, par. 10-1-27.1.)

Section 10-2.1-5.1 of the Illinois Municipal Code and section 37.16a of the Fire Protection District Act differ from the provision quoted above only with respect to the introductory language used in each to indicate its application. See Ill.Rev.Stat.1985, ch. 24, par. 10-2.1-5.1 (“No municipality covered under this Division 2.1 may make or enforce \* \* \* ”); Ill.Rev.Stat.1985, ch. 127, par. 37.16a (“No fire protection district may make or enforce \* \* \* ”).

Public Act 84-1018 also contained a provision pre-empting inconsistent activity by home rule units of local government. Section 3 of the public act text, which the legislature did not codify, states:

“Pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution, this Act

531 N.E.2d 347

125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52

(Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 4

specifically denies and limits the exercise by a home rule unit of any power which is inconsistent with this Act, and all existing laws and ordinances which are inconsistent with this Act are hereby superseded. This Act does not pre-empt the concurrent exercise by home rule units of powers consistent with this Act."

The fourth and final section of the public act text provided the effective date of the legislation.

[1] The plaintiffs renew here their argument that the preemption provision contained in section 3 of the public act text precludes all home rule units from restricting the political activities of their employees. This argument \*256 is refuted by the plain language of the act, and it must fail.

The preemption provision bars home rule units from exercising any power in a manner "inconsistent with this Act" and supersedes all local laws and ordinances that are "inconsistent with this Act." A determination of what is "inconsistent with this Act" requires reference to the other parts of the public act text. As we have stated, sections 1 and 2 of the act amend the Illinois Municipal Code and the Fire Protection District Act by adding to those statutes provisions that forbid division 1 and division 2.1 municipalities and fire protection districts to restrict the political activities of their employees. In ascertaining the scope of the preemption provision, we may ignore section 2 of the public act text. The only units of local government that may exercise home rule powers are counties and municipalities (Ill. Const.1970, art. VII, § 6(a)); the term "municipality" comprises cities, villages, and incorporated towns (Ill. Const.1970, art. VII, § 1). Because a fire \*\*350 \*\*\*55 protection district is neither a county nor a municipality, as that term is used here, it cannot have home rule powers, and therefore the preemption provision of section 3 can have no application to the fire protection districts.

Thus, a local ordinance would be inconsistent with the act only if the home rule unit adopting the ordinance were covered under one of the statutes

amended by the act—that is, only if the home rule unit were a division 1 or division 2.1 municipality. As the appellate court correctly reasoned, an ordinance adopted by a home rule unit other than a division 1 or division 2.1 municipality would not be prohibited by the act and therefore would not be inconsistent with it. (152 Ill.App.3d at 94, 105 Ill.Dec. 275, 504 N.E.2d 144.) The plaintiffs' interpretation of the preemption provision enlarges considerably the scope of the act, beyond the intent expressed by the legislature, and therefore we decline \*257 to read into the preemption provision the general, wide-ranging prohibition suggested by the plaintiffs.

Thus, the legislature did not need to include within the preemption provision additional language confining its operation to home rule units that are "covered under" the statutes amended by the act, as the plaintiffs suggest the legislature would have done had it intended to limit the scope of the preemption provision in that manner. By its own terms, section 3 of the public act text preempts only local ordinances inconsistent with the act, and, as we have seen, the act purports to prohibit only home rule units covered under division 1 or division 2.1 from restricting the political activities of their employees. The legislature clearly stated the intended scope of the preemption provision, and a catalogue of the entities whose home rule powers were being limited by the act would have been redundant.

Contrary to the plaintiffs' argument, we do not believe that our interpretation renders the preemption provision superfluous. Sections 10-1-27.1 and 10-2.1-5.1 of the Illinois Municipal Code cannot by themselves prevent home rule units covered under division 1 or division 2.1 from restricting the political activities of their employees, for this court has previously recognized the authority of home rule units to establish requirements different from those prescribed in division 1 (see *Peters v. City of Springfield* (1974), 57 Ill.2d 142, 311 N.E.2d 107) and division 2.1 (see *Stryker v. Village of Oak Park*



531 N.E.2d 347  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
 (Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 5

(1976), 62 Ill.2d 523, 343 N.E.2d 919). Here, the legislature chose to deny to home rule units covered under division 1 or 2.1 the power to act inconsistently with the new rules expressed in section 101-27.1 and 10-2.1-5.1. To that end, the legislature declared its preemptive intent and invoked article VII, sections 6(h) and (i), of the Illinois Constitution (Ill. Const.1970, art. VII, §§ 6(h), (i)). Section 6(h) of article VII empowers the legislature to "provide specifically by \*258 law for the exclusive exercise by the State of any power or function of a home rule unit," with several exceptions not relevant here. Section 6(i) of article VII provides that "[h]ome rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive."

In this regard, it may be noted that if the legislature had intended in Public Act 84-1018 to preempt all local restrictions on the political activities of employees of home rule units, a reference to section 6(g) of article VII, rather than section 6(h), would have been necessary. Section 6(g) provides, "The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State," with exceptions not relevant here. (Ill. Const.1970, art. VII, § 6(g).) Because the legislature has not attempted to formulate a civil service system applicable to all home rule units, preemption of home rule activity in this sphere would have required legislative action under section 6(g) rather than section 6(h). That the legislature happened to pass Public Act 84-1018 by the extraordinary\*\*\*56 \*\*351 majorities required for preemption under section 6(g) does not, contrary to the plaintiffs' argument, indicate to us that a broader preemptive scope was intended. The bill may have attracted such widespread support in the legislature precisely because its effect was confined to that apparent from its language.

Finally, the placement of the preemption provision in a separate section of the public act text does not suggest that the legislature intended for the provision to apply generally to all home rule units. As we have noted, section \*259 1 of the public act text added sections 10-1-27.1 and 10-2.1-5.1 to the Illinois Municipal Code. Rather than repeat the preemption language in each of those provisions, the legislature chose instead to place the language in a separate part of the act. Unlike the plaintiffs, we decline to infer from that circumstance an intent different from the one clearly expressed in the language used by the legislature.

Our result here is required by the plain and unambiguous language of the act, and therefore we have no need to consult the legislative debates of the bill for guidance. (See *People v. Madison* (1988), 121 Ill.2d 195, 203, 117 Ill.Dec. 213, 520 N.E.2d 374; *Chicago National League Ball Club, Inc. v. Thompson* (1985), 108 Ill.2d 357, 366, 91 Ill.Dec. 610, 483 N.E.2d 1245.) We find no contradiction, however, in any part of the legislative history offered by the plaintiffs in support of their position here.

For example, the plaintiffs refer to a statement made in the House of Representatives by one sponsor regarding the purpose of the bill that eventually became Public Act 84-1018:

"House Bill 1539 grants political rights to local policemen, local firefighters, members of fire protection districts and civil service employees. It's essentially what we did yesterday with House Bill 761 with state police officers. It simply grants these people the same political rights that anybody else has and doesn't designate them to the classification of second class political citizens." (84th Ill.Gen.Assem., House Proceedings, May 23, 1985, at 49 (statement of Representative Curran).)

That summary of the legislation does not indicate to us that the representative believed that the purpose of the bill was broader than what its plain language expresses.

531 N.E.2d 347  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
 (Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 6

[2] In this court the plaintiffs make the additional argument, for the first time in these proceedings, that the City of Chicago is in fact a municipality covered under article 10, division 1, of the Illinois Municipal Code. The \*260 City adopted, at one time, article 10, division 1, of the Code, but the city council later replaced the bulk of those provisions with a personnel code of its own. (See *Resman v. Personnel Board* (1981), 96 Ill.App.3d 919, 922, 52 Ill.Dec. 439, 422 N.E.2d 120.) In its personnel ordinance the city council expressly retained two provisions found in article 10, division 1, however, and it is the plaintiffs' theory that the city council's retention of the two Illinois Municipal Code provisions signifies that the City continues to operate under the State statute. The plaintiffs conclude that the City now is barred, by section 10-1-27.1 and the preemption provision, from enforcing the police department's leave-of-absence requirement for officers who are political candidates. The plaintiffs did not raise this argument in either the circuit court, where they won, or the appellate court, where they lost. In this court, the argument appears in the plaintiffs' initial brief and reply brief, but not in their petition for leave to appeal.

Effective January 1, 1976, the city council enacted a personnel ordinance, replacing the personnel scheme provided by article 10, division 1, of the Illinois Municipal Code. Section 25.1-1 of the Chicago Municipal Code provided:

"It is the general purpose of this ordinance, and it is necessary in the public interest, to establish a system of personnel administration that meets the social, economic, and program needs of the people of the City of Chicago, to provide for a professional and progressive merit system for employment and to insure flexible career service within the City of Chicago\*\*\*57 \*\*352 by substituting a public employment system superseding the Civil Service System now operating within the City of Chicago pursuant to the law of the State of Illinois." (Chicago Municipal Code § 25.1-1 (1976).)

In 1981 the city council repealed the 1976 per-

sonnel ordinance and replaced it with a new one; the introductory \*261 paragraph of the new personnel ordinance contained the same statement of purpose found in the earlier ordinance, though the 1981 version deleted the then-unnecessary reference to "the Civil Service System now operating pursuant to the law of the State of Illinois." Like the 1976 personnel ordinance, the 1981 ordinance applied to all employees in the city service, including police officers, except officers above the rank of captain. Chicago Municipal Code § 25.1-3 (1981).

As the basis for the argument that the City of Chicago is a municipality "covered under" article 10, division 1, of the Illinois Municipal Code and therefore subject to section 10-1-27.1, the plaintiffs rely on a provision found in the City's personnel ordinance. Section 25.1-13 of the Chicago Municipal Code provides:

"This ordinance shall not apply nor have any effect upon the Police Board, its manner of selection, composition, or its powers and duties as set forth in Section 11-2 and Section 11-3 of this Code and Section 3-7-3.1, Section 10-1-18.1, and Section 10-1-45 of the Illinois Municipal Code. Nor shall this ordinance have any effect upon the selection, powers or duties of the Superintendent of Police as set forth in the Municipal Code of the City of Chicago and Section 3-7-3.2 of the Illinois Municipal Code." (Emphasis added.) (Chicago Municipal Code § 25.1-13 (1981).)

An identical provision appeared in the City's 1976 personnel ordinance. Under the City's personnel ordinance, the police board therefore remains subject to sections 10-1-18.1 and 10-1-45 of the Illinois Municipal Code. Section 10-1-18.1 prescribes certain requirements for the removal, discharge, and suspension of police officers; section 10-1-45 allows for review of personnel decisions under the Administrative Review Law (Ill.Rev.Stat.1985, ch. 110, pars. 3-101 through 3-112). The plaintiffs argue that the city council's retention of sections \*262 10-1-18.1 and 10-1-45

531 N.E.2d 347  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
 (Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 7

should be construed to mean that the City is "covered under" that statute for purposes of applying the preemption provision now applicable to article 10, division 1.

The defendants argue in response that the plaintiffs have waived this argument because they failed to present it earlier. Addressing the merits of the plaintiffs' contention, the defendants maintain that the City should not be deemed to be "covered under" article 10, division 1, of the Illinois Municipal Code. The defendants note that the City's own personnel ordinance duplicates the requirements of section 10-1-18.1 pertaining to the removal, discharge, and suspension of police officers, and that retention of section 10-1-45 was necessary so that the board's decisions would remain reviewable under the Administrative Review Law, a matter that the City could not by itself provide for (see *Paper Supply Co. v. City of Chicago* (1974), 57 Ill.2d 553, 579-80, 317 N.E.2d 3). The defendants conclude that the City does not operate under article 10, division 1, of the Illinois Municipal Code and that the City therefore should not be deemed to be "covered under" those provisions for purposes of applying section 10-1-27.1 and the preemption provision of the amendatory act. The defendants do not dispute that the leave-of-absence requirement would be invalidated by operation of the preemption provision and section 10-1-27.1, if they are held to be applicable here.

As we have indicated, the plaintiffs did not raise this argument in the courts below. Moreover, they did not raise the argument in their petition for leave to appeal, waiting until their initial brief to assert the question. "However, this court, relying on our Rule 366(a)(5) (87 Ill.2d R. 366(a)(5)), has considered arguments not presented in the trial court when the arguments are based on the interpretation of a statute, the necessary facts are before us, the parties have briefed and argued the \*263 point, and the point is of public interest. \*\*353 \*\*\*58(*Cronin v. Lindberg* (1976), 66 Ill.2d 47, 61 [4 Ill.Dec. 424, 360 N.E.2d 360].)" (*In re Estate of*

*Swiecicki* (1985), 106 Ill.2d 111, 122-23, 87 Ill.Dec. 511, 477 N.E.2d 488.) In *Swiecicki* the court considered and rejected a question of statutory interpretation even though the appellant in that case had "failed to present this argument either in the circuit court or the appellate court." (106 Ill.2d at 122, 87 Ill.Dec. 511, 477 N.E.2d 488.) In *Cronin* the court considered an issue of statutory interpretation that was the gravamen of one of two consolidated actions and thus was presented to the trial judge but was not decided by him because it was rendered moot by his ruling that the statute in question was unconstitutional. Citing *Swiecicki* and *Cronin*, the plaintiffs in this case urge us to consider their own belated argument, contending that the question is a purely legal one of statutory interpretation that has been briefed and argued by the parties and is of great public interest.

The plaintiffs have been doubly late in presenting this issue. Not only did they fail to present the argument in the proceedings in either court below, but they did not raise the issue in their petition for leave to appeal filed with this court. Although it is not necessary that the plaintiffs have raised the precise argument in the appellate court, it is necessary that the issue be one that is fairly presented by the record. In *Mueller v. Elm Park Hotel Co.* (1945), 391 Ill. 391, 63 N.E.2d 365, the court explained:

"The rule is that on review of an Appellate Court judgment in this court, on the appeal of the party who was appellant in that court, questions which were not raised and argued by him in the Appellate Court cannot be raised or argued for the first time in this court. This rule is based on the fact that the party who was the appellant in the Appellate Court made the issues in that court by his assignments of error and his arguments in that court, and he cannot raise new questions in this court. This rule, however, does not apply to the party who was appellee in the Appellate Court, because he had nothing to do \*264 with making the issues in that court. He is only required to defend against the questions raised and the issues presented by the ap-

531 N.E.2d 347  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
 (Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

Page 8

pellant in that court. Where the trial court is reversed by the Appellate Court and the appellee in that court brings the case here for further review, he may raise any questions properly presented by the record to sustain the judgment of the trial court, even though those questions were not raised or argued in the Appellate Court. He may sustain the judgment of the trial court upon any ground justified by the record, regardless of the fact that such questions were not presented to and passed upon by the Appellate Court." 391 Ill. at 398-99, 63 N.E.2d 365.

Under the rule described in *Mueller*, the plaintiffs, who were the appellees in the appellate court and who are the appellants in this court, would be entitled to raise here, in support of the circuit court's favorable judgment and against the appellate court's adverse judgment, any arguments properly presented by the record even though the points were not raised or argued in the appellate court. (But see *Kramer v. Exchange National Bank* (1987), 118 Ill.2d 277, 286, 113 Ill.Dec. 248, 515 N.E.2d 57 (refusing to consider point raised for first time in supreme court by plaintiffs, who prevailed in circuit court but who lost in appellate court).) We question whether under *Mueller* the new argument is one that may be deemed to be properly presented by the record in this case. Although the issue is a purely legal one, involving only a question of statutory construction, we do not believe that the plaintiffs should now be allowed, at this late date, to change the theory on which their action is based. Their new argument introduces a different theory of the case, one that is sharply at odds with their original theory. The plaintiffs initially contended that the preemption provision contained in the amendatory act was an independent, free-standing provision applicable to all home rule units, including those, such as the City of Chicago, that did not operate under article 10, division 1, of the Illinois \*\*\*354 \*\*\*59 Municipal \*265 Code. The new ground now asserted by the plaintiffs in support of the circuit court's favorable ruling enlarges considerably the scope of the inquiry, calling into question the rela-

tionship between the Illinois Municipal Code and the City's own personnel ordinance.

As we have indicated, the plaintiffs failed to present the new argument in their petition for leave to appeal to this court. Our Rule 315(b), which is applicable to both civil and criminal appeals (see 107 Ill.2d R. 612(b)), requires that the petition for leave to appeal set out "(3) a statement of the points relied upon for reversal of the judgment of the Appellate Court; \* \* \* and (5) a short argument (including appropriate authorities) stating why review by the Supreme Court is warranted and why the decision of the Appellate Court should be reversed or modified." (107 Ill.2d Rules 315(b)(3), (b)(5).) We have previously held that we need not consider an argument that a party raises in a later brief but fails to raise in its petition for leave to appeal. (See, e.g., *People v. Ward* (1986), 113 Ill.2d 516, 522-23, 101 Ill.Dec. 834, 499 N.E.2d 422; *People v. Anderson* (1986), 112 Ill.2d 39, 43-44, 96 Ill.Dec. 58, 490 N.E.2d 1263.) In this case, then, the plaintiffs' failure to specifically raise in their petition for leave to appeal the issue of the effect of the City's retention of the Illinois Municipal Code provisions may be considered a waiver of the argument for purposes of the proceedings in this court.

To be sure, the waiver rule is not a jurisdictional requirement, but a principle of administrative convenience. This is made clear by Rule 366(a)(5), which provides that a reviewing court has the authority to "enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief \* \* \* that the case may require." (107 Ill.2d R. 366(a)(5); see *Hux v. Raben* (1967), 38 Ill.2d 223, 224, 230 N.E.2d 831 (discussing relationship between Rule 366(a)(5) and Rule 341(e)(7), pertaining to contents of briefs on appeal).) \*266 Thus, a party's failure to assert the argument in the petition for leave to appeal does not preclude consideration of the question on review, and this court has previously considered matters that an appellant omitted from its petition for leave to appeal. (E.g.,



531 N.E.2d 347  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52  
 (Cite as: 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52)

*Genaust v. Illinois Power Co.* (1976), 62 Ill.2d 456, 462, 343 N.E.2d 465; *Schatz v. Abbott Laboratories, Inc.* (1972), 51 Ill.2d 143, 144-45, 281 N.E.2d 323.) In both *Genaust* and *Schatz* the additional issues that the appellants raised on review in this court concerned portions of their causes of action that had been presented to and adjudicated by the lower courts. The situation here is far different. In this case, the plaintiffs' new argument poses an alternative theory of the case, one that was not discernible from an examination of the proceedings in the courts below. Thus, in allowing the plaintiffs' petition for leave to appeal, we had no inkling of their new theory of the case, which they then asserted, following the allowance of their appeal, in support of the judgment of the circuit court. Clearly, we have the authority to consider the plaintiffs' new argument. But the resolution of the question is by no means clear, and we decline to consider here an argument that was not presented in the proceedings below and is raised here as an afterthought. We note, however, that our decision in this appeal is made without prejudice to the rights of persons who are not parties to the present action to raise the same argument in a future case, or to the rights of the present plaintiffs to raise the argument in a future case arising from a different cause of action. See *Housing Authority v. YMCA* (1984), 101 Ill.2d 246, 251-52, 78 Ill.Dec. 125, 461 N.E.2d 959.

For the reasons stated, the judgment of the appellate court is affirmed.

JUDGMENT AFFIRMED.

JUSTICE STAMOS took no part in the consideration or decision of this case.

Ill., 1988.  
*Dineen v. City of Chicago*  
 125 Ill.2d 248, 531 N.E.2d 347, 126 Ill.Dec. 52

END OF DOCUMENT

**Exhibit B**

Westlaw.

422 N.E.2d 120

96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439

(Cite as: 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439)

Page 1

**C**Appellate Court of Illinois, First District, Second  
Division.

Joesph RESMAN, Plaintiff-Appellee,

v.

PERSONNEL BOARD OF the CITY OF CHICA-  
GO, William E. Cahill, Charles A. Pounian, Regin-  
ald DuBoid, Quentin J. Goodwin and Ana Benson,  
its members, Defendants-Appellants.

No. 80-1802.

May 26, 1981.

Rehearing Denied June 9, 1981.

Fire department lieutenant sought administrative review of the city's personnel board's decision discharging him. The Circuit Court, Cook County, Arthur L. Dunne, J., reversed city's decision, and the city appealed. The Appellate Court, Stamos, J., held that fire department lieutenant charged with violating city ordinances and department regulations by residing outside the city could be discharged, even though he was not given statutory warning that his statements during investigative interrogation could be used against him, where statute requiring giving of written warnings did not apply to city which had home rule authority to adopt conflicting personnel ordinance but did not require such warnings.

Reversed.

West Headnotes

**[1] Municipal Corporations 268 ↪ 78**

268 Municipal Corporations

268III Legislative Control of Municipal Acts,  
Rights, and Liabilities268k77 Operation and Effect of Legislative  
Acts

268k78 k. In General. Most Cited Cases

Home rule provision of State Constitution al-  
lows home rule municipality to enact ordinance that

supersedes conflicting state statute passed prior to  
effective date of 1970 Constitution. S.H.A.Const.  
Art. 7, § 6.

**[2] Municipal Corporations 268 ↪ 198(3)**

268 Municipal Corporations

268V Officers, Agents, and Employees

268V(B) Municipal Departments and Of-  
ficers Thereof

268k193 Fire

268k198 Suspension and Removal of  
Firemen

268k198(3) k. Proceedings. Most

Cited Cases

Fire department lieutenant charged with violat-  
ing city ordinances and department regulations by  
residing outside city could be discharged even  
though he was not given statutory warning that his  
statements during investigative interrogation could  
be used against him, where statute requiring giving  
of written warnings to employees did not apply to  
city that had home rule authority to adopt conflict-  
ing personnel ordinance which did not require such  
warnings. S.H.A.Const. Art. 7, § 6; S.H.A. ch. 24, §  
10-1-18.

**[3] Statutes 361 ↪ 223.2(1.1)**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k223 Construction with Reference to  
Other Statutes361k223.2 Statutes Relating to the  
Same Subject Matter in General361k223.2(1) Statutes That Are in  
Pari Materia361k223.2(1.1) k. In General.  
Most Cited Cases

(Formerly 361k223.2(1))

"In pari materia" is a rule of statutory construc-  
tion and refers to fact that intention of legislature  
can be deduced from different statutes that relate to

422 N.E.2d 120  
 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439  
 (Cite as: 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439)

Page 2

same subject.

#### [4] Municipal Corporations 268 ➡ 120

##### 268 Municipal Corporations

##### 268IV Proceedings of Council or Other Governing Body

##### 268IV(B) Ordinances and By-Laws in General

##### 268k120 k. Construction and Operation. Most Cited Cases

Principle of "in pari materia" did not apply so as to permit intent of city council in drafting ordinance to be deduced from similar statutes passed by legislature.

#### [5] Constitutional Law 92 ➡ 3595

##### 92 Constitutional Law

##### 92XXVI Equal Protection

##### 92XXVI(E) Particular Issues and Applications

##### 92XXVI(E)7 Labor, Employment, and Public Officials

##### 92k3592 Public Employees and Officials

##### 92k3595 k. Removal, Recall, and Discipline. Most Cited Cases

(Formerly 92k238.5)

Fire department lieutenant was not denied equal protection by being removed from employment under city ordinance which did not grant him right to written warning during investigative interrogation, even though other fire department lieutenants in state could be entitled to such warning under statute not incorporated into city ordinance, where disparate treatment was result of differing legislative responses to similar problems and city ordinance provided for like treatment of all employees subject to it. U.S.C.A.Const. Amend. 14; S.H.A. ch. 24, § 10-1-18.

**\*919 \*\*120 \*\*\*439** Stanley Garber, Corp. Counsel, Chicago, for defendants-appellants; Robert R. Retke, Wayne T. Oesterlin, Asst. Corp. Counsel, Chicago, of counsel.

**\*920** John P. Murray, Chicago, for plaintiff-appellee.

##### STAMOS, Justice:

Plaintiff Joseph Resman brought an action in the circuit court of Cook County for administrative review of a decision of defendant Personnel Board of the City of Chicago. The personnel board found that **\*\*121 \*\*\*440** plaintiff, a lieutenant in the Chicago Fire Department, had violated city ordinances and fire department regulations by residing outside the city of Chicago. The board ordered plaintiff discharged from the fire department. The court below reversed the order of defendant board, on the ground that plaintiff was not given a written warning that his statements during an investigative interrogation could be used against him. That defendant board has appealed this decision.

The sufficiency of the evidence is not in issue, so we omit unnecessary detail in reciting the facts. Plaintiff has been a fire-fighter since 1961. In 1970, plaintiff and his family moved to South Holland, Illinois. Plaintiff subsequently took an apartment, which he shared with another man, at 7900 S. Troy in Chicago. Plaintiff remained married to his wife. Some of plaintiff's personal documents, such as his driver's license and voter's registration, show a Chicago address for plaintiff. Other items, including bills and a joint bank account, show a South Holland address. Plaintiff's wife has not been employed during the period of plaintiff's claimed Chicago residency, and plaintiff remains the sole support of his wife and three children, one of whom was born after the move to South Holland. On two mornings in September 1978, an investigator for the Internal Affairs Division of the fire department observed plaintiff leaving the South Holland residence on his way to work.

On September 29, 1978, plaintiff was called before Captain Ryan of the Internal Affairs Division for an investigative interview. The record does not reveal what took place at this interview, and no statement made by plaintiff during the course of

422 N.E.2d 120  
 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439  
 (Cite as: 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439)

Page 3

this interview was introduced at the subsequent personnel board hearing. On April 23, 1979, plaintiff was formally notified of the charges against him. At no time was plaintiff given a written or an oral warning that admissions he might make could be used as the basis for charges against him.

The trial court specifically found that section 10-1-18 of the Illinois Municipal Code (Ill.Rev.Stat.1979, ch. 24, par. 1-1-1 et seq.) applied to the instant case. Section 10-1-18 provides, *inter alia*, that:

"Before any officer or employee in the classified service of any municipality may be interrogated or examined by or before any disciplinary board, or departmental agent or investigator, the results of which hearing, interrogation or examination may be the basis for filing charges seeking his removal or discharge, he must \*921 be advised in writing as to what specific improper or illegal act he is alleged to have committed; he must be advised in writing that his admissions made in the course of the hearing, interrogation or examination may be used as the basis for charges seeking his removal or discharge." (Ill.Rev.Stat.1979, ch. 24, par. 10-1-18.)

The trial court also relied on *Palcek v. City of Chicago Heights* (1979), 74 Ill.App.3d 702, 30 Ill.Dec. 871, 393 N.E.2d 1218. In *Palcek*, the plaintiff was a police officer whose dismissal proceedings were governed by section 10-2.1-17 of the Illinois Municipal Code. The court in *Palcek* observed that sections 10-1-18 and 10-1-18.1 of the Municipal Code, which sections did not apply to plaintiff *Palcek* but applied to other municipal employees, provide for a written warning prior to interrogation of an employee. Section 10-2.1-17 contains no such provision. In order to foreclose an equal protection problem, the *Palcek* court read the requirements of sections 10-1-18 and 10-1-18.1 into section 10-2.1-17, and held that the plaintiff's dismissal without such a warning was improper. See *Palcek*, at 706-07.

A recent decision in the second district appellate court has rejected the reasoning in *Palcek*. In *Lupo v. Board of Fire & Police Comm'rs* (1980), 82 Ill.App.3d 449, 37 Ill.Dec. 622, 402 N.E.2d 624, the court refused to find a violation of equal protection in the disparity between sections 10-1-18 and 10-1-18.1, and section 10-2.1-17. (82 Ill.App.3d at 455-56, 37 Ill.Dec. 622, 402 N.E.2d 624.) Putting aside the equal protection issue for the moment, we find the \*\*122 \*\*\*441 *Palcek* case inapposite. The *Palcek* court assumed that section 10-2.1-17 of the Illinois Municipal Code applied because the defendant city of Chicago Heights never introduced evidence that any Chicago Heights ordinance governed the proceedings. (*Palcek*, at 706.) In the instant case, the personnel board has, from the beginning, asserted that section 10-1-18 does not apply because the city of Chicago has exercised its home rule powers and enacted a substitute personnel code.

[1][2] It is well settled that the home rule provision of the Illinois Constitution (Ill.Const.1970, art. VII, s 6) allows a home rule municipality to enact an ordinance that supersedes a conflicting state statute passed prior to the effective date of the 1970 Constitution. (See e. g., *Stryker v. Village of Oak Park* (1976), 62 Ill.2d 523, 527, 343 N.E.2d 919 cert. denied, (1976), 429 U.S. 832, 97 S.Ct. 95, 50 L.Ed.2d 97; *Scott v. Rochford* (1978), 66 Ill.App.3d 338, 341, 23 Ill.Dec. 383, 384 N.E.2d 19, aff'd (1979), 77 Ill.2d 507, 34 Ill.Dec. 167, 397 N.E.2d 801.) Consequently, the city of Chicago had the power to supplant the civil service provisions of the Illinois Municipal Code with its own personnel ordinance. As plaintiff points out, Chicago's personnel ordinance is silent on the subject of warnings prior to investigative interrogations. Plaintiff interprets this omission as evidence that the \*922 city has elected to remain bound by the requirements of section 10-1-18. The more pertinent inquiry, however, is whether the city council intended its personnel code (chapter 25.1 of the Municipal Code of Chicago) to effectively replace the civil service provisions of the State act (article 10, division 1 of



422 N.E.2d 120  
 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439  
 (Cite as: 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439)

Page 4

the Illinois Municipal Code). That question is answered in s 25.1-1 of the city's municipal code: "It is the general purpose of this ordinance \* \* \* to establish a system of personnel administration \* \* \* by substituting a public employment system superseding the Civil Service System now operating within the City of Chicago pursuant to the law of the State of Illinois." (Chicago, Ill., Mun. Code s 25.1-1 (1976).) We therefore find that the trial court's view that section 10-1-18 controlled plaintiff's dismissal was erroneous.

[3][4] Plaintiff contends that chapter 25.1 of the Municipal Code of Chicago, even if it applies, can only be saved from constitutional attack by reading in the provisions of section 10-1-18. In this connection, plaintiff relies on the equal protection argument in *Palcek*. Again, however, *Palcek* is inapposite. The court in *Palcek* read three corresponding sections of the Illinois Municipal Code together, citing the principle of *in pari materia*. (See *Palcek*, 74 Ill.App.3d at 706, 30 Ill.Dec. 871, 393 N.E.2d 1218.) *In pari materia* is a rule of statutory construction and refers to the fact that the intention of the legislature can be deduced from different statutes that relate to the same subject. (See *People ex rel. Harrell v. B. & O. R.R. Co.* (1951), 411 Ill. 55, 59, 103 N.E.2d 76.) Clearly, the principle of *in pari materia* can have no application to the instant case, since the intent of the Chicago City Council in enacting chapter 25.1 cannot be divined by resort to a statute passed by the Illinois legislature.

[5] Plaintiff, in pressing his equal protection argument also states that there are differing personnel procedures for firemen and policemen. Plaintiff has apparently misread section 25.1-13 of the Municipal Code of Chicago. That section provides that the city's personnel ordinance shall not affect the powers and duties of the Police Board, as set forth in section 10-1-18.1 and other sections of the Illinois Municipal Code. Section 25.1-13 does not except police officers from the operation of chapter 25.1, and section 25.1-3 makes it clear that police officers are included within the city's personnel

scheme. See Chicago, Ill., Mun. Code ss 25.1-3(5), 25.1-13 (1975).

The most that can be said, then, is that certain municipal employees in cities other than Chicago have more procedural rights than Chicago's employees. The privilege denied plaintiff was the right to a Miranda -type warning prior to an administrative interrogation. In the context of an administrative proceeding where the employee faces no criminal penalties, this court has \*\*123 \*\*\*442 held that there is no constitutional right to a Miranda -type admonition. (See \*923 *Distaola v. Department of Registration & Educ.* (1979), 72 Ill.App.3d 977, 982, 29 Ill.Dec. 226, 391 N.E.2d 489.) In the instant case, the disparate treatment afforded municipal employees in different Illinois cities is not the result of a legislative classification, but, rather, demonstrates the variety of responses that two distinct legislative bodies (the Chicago City Council and the Illinois legislature) can provide when faced with similar problems. The approach adopted by the city of Chicago does not violate any constitutional right of the plaintiff and, since the city's personnel code provides for like treatment of all employees subject to the ordinance (see *Smith v. Murphy* (1943), 384 Ill. 34, 40, 50 N.E.2d 844), we do not find a violation of equal protection of the law.

In sum, we find that the only applicable statutory provision is chapter 25.1 of the Municipal Code of Chicago, which does not provide for pre-interrogation admonitions. Since the trial court based its reversal of the personnel board solely on the absence of the warning provided for in section 10-1-18 of the Illinois Municipal Code, the decision of the trial court is reversed.

REVERSED.

DOWNING and PERLIN, JJ., concur.

Ill.App. 1 Dist., 1981.  
*Resman v. Personnel Bd. of City of Chicago*  
 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439

422 N.E.2d 120  
96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439  
(Cite as: 96 Ill.App.3d 919, 422 N.E.2d 120, 52 Ill.Dec. 439)

END OF DOCUMENT

**AGREEMENT BETWEEN**  
**THE CITY OF CHICAGO**  
**DEPARTMENT OF POLICE**  
**AND THE**  
**FRATERNAL ORDER OF POLICE**  
**CHICAGO LODGE NO. 7**

**EFFECTIVE JULY 1, 2007**  
**THROUGH JUNE 30, 2012**

Richard M. Daley  
Mayor

Jody P. Weis  
Superintendent

## TABLE OF CONTENTS

<b>1</b>	<b>PREAMBLE .....</b>	<b>1</b>
<b>2</b>	<b>RECOGNITION.....</b>	<b>1</b>
<b>3</b>	<b>LODGE SECURITY .....</b>	<b>1</b>
3.1	Maintenance of Membership and Agency Shop. ....	1
3.2	Lodge Presentation at Orientation. ....	2
3.3	Dues Deduction.....	2
3.4	Indemnity. ....	2
<b>4</b>	<b>MANAGEMENT RIGHTS.....</b>	<b>2</b>
<b>5</b>	<b>NO STRIKE .....</b>	<b>3</b>
5.1	No Strike Commitment. ....	3
5.2	Resumption of Operations. ....	3
5.3	Union Liability. ....	4
5.4	Discipline of Strikers. ....	4
<b>6</b>	<b>BILL OF RIGHTS .....</b>	<b>4</b>
6.1	Conduct of Disciplinary Investigation. ....	4
6.2	Witness Officer's Statements in Disciplinary Investigations. ....	6
6.3	Non-Adoption of Ordinance. ....	7
6.4	Photo Dissemination. ....	7
6.5	Compulsion of Testimony.....	7
6.6	Auto-Residency Card.....	7
6.7	Polygraph. ....	7
6.8	Disclosure. ....	7
6.9	Media Information Restrictions. ....	8
6.10	Discipline Screening Program. ....	8
6.11	Prohibition on Use and Disclosure of Social Security Numbers. ....	8
6.12	Mediation. ....	8
6.13	Review Procedures.....	9
<b>7</b>	<b>SUMMARY PUNISHMENT .....</b>	<b>9</b>
7.1	Administration of Summary Punishment. ....	9
7.2	Challenge of Summary Punishment. ....	9
<b>8</b>	<b>EMPLOYEE SECURITY .....</b>	<b>9</b>
8.1	Just Cause Standard. ....	9
8.2	File Inspection.....	10
8.3	Limitation on Use of File Material. ....	10
8.4	Use and Destruction of File Material. ....	10
8.5	Direct Appeal to the Superintendent.....	11
8.6	Notification. ....	11
8.7	Detectives, Evidence Technicians, Police Laboratory Technicians, Forensic Investigators and Field Training Officers .....	11



## TABLE OF CONTENTS

8.8	Tactical Response Reports (TRR).....	11
8.9	Superintendent's Authority.....	11
<b>9</b>	<b>GRIEVANCE PROCEDURE .....</b>	<b>11</b>
9.1	Definition and Scope.....	11
9.2	Procedures, Steps and Time Limits for Standard Grievances. .	12
9.3	Arbitration of Standard Grievances. ....	13
9.4	Psychological Review.....	13
9.5	Medical Grievances.....	15
9.6	Suspension Grievances.....	16
9.7	Authority of the Arbitrator. ....	18
9.8	Expense of the Arbitrator. ....	19
9.9	Processing and Time Limits.....	19
9.10	Normal Operation. ....	19
9.11	Exhaustion.....	19
<b>10</b>	<b>NON-DISCRIMINATION .....</b>	<b>19</b>
10.1	Equal Employment Opportunity. ....	19
10.2	Non-Discrimination. ....	19
10.3	Political Activity or Campaigning.....	19
10.4	Religious Holiday Accommodation. ....	20
10.5	Americans with Disabilities Act. ....	20
<b>11</b>	<b>HOLIDAYS .....</b>	<b>20</b>
11.1	Designated Holiday. ....	20
11.2	Compensation for Holidays. ....	21
11.3	Personal Day.....	21
11.4	Special Compensation Time.....	22
11.5	Holiday Declaration. ....	22
<b>12</b>	<b>PROMOTIONS.....</b>	<b>22</b>
<b>13</b>	<b>LAYOFFS – RE-EMPLOYMENT .....</b>	<b>22</b>
13.1	Notice of Layoffs. ....	22
13.2	Hiring During Layoffs.....	23
13.3	Recall. ....	23
<b>14</b>	<b>BULLETIN BOARDS .....</b>	<b>23</b>
<b>15</b>	<b>SAFETY ISSUES.....</b>	<b>23</b>
15.1	Cooperation.....	23
15.2	Safety Committee.....	23
15.3	Disabling Defects.....	24
15.4	Notice.....	24
<b>16</b>	<b>SECONDARY EMPLOYMENT AND SPECIAL EMPLOYMENT.....</b>	<b>24</b>
16.1	Secondary Employment.....	24
16.2	Special Employment. ....	24

## TABLE OF CONTENTS

<b>17</b>	<b>FOP REPRESENTATIVES .....</b>	<b>26</b>
17.1	Meeting Participation and Scheduling .....	26
17.2	Leave from Duty.....	26
17.3	Attendance at Lodge Meetings. ....	26
17.4	Grievance Processing. ....	26
17.5	Attendance at State and National Conferences.....	26
17.6	Lodge Negotiating Team.....	27
17.7	Lodge Activity.....	27
<b>18</b>	<b>DISABILITY INCOME.....</b>	<b>27</b>
18.1	I.O.D.....	27
18.2	Non-I.O.D.....	27
18.3	Limited Duty I.O.D. ....	27
18.4	Recognized Openings. ....	28
18.5	Certification. ....	28
18.6	Return to Duty.....	28
18.7	Advisory Committee.....	28
18.8	Injuries on Duty & Recurrence Claims.....	28
18.9	Employer Responsibility for Hospital, Medical and Prescription Costs and Pension Contributions.....	28
18.10	Medical Benefit Statement.....	29
<b>19</b>	<b>BEREAVEMENT LEAVE .....</b>	<b>29</b>
19.1	Death in Family. ....	29
19.2	Definition of Family. ....	29
19.3	Extended Bereavement Leave.....	30
<b>20</b>	<b>HOURS AND OVERTIME.....</b>	<b>30</b>
20.1	Work Day and Work Week.....	30
20.2	Compensation for Overtime.....	30
20.3	Sixth and Seventh Day Work. ....	30
20.4	Call-Back. ....	30
20.5	Court Time. ....	30
20.6	Tour of Duty Exchange.....	31
20.7	Change of Schedule. ....	31
20.8	Stand-By.....	33
20.9	Day-Off Change.....	33
20.10	Day-Off Group Assignment.....	34
20.11	Accumulation of Compensatory Time.....	34
20.12	Back to Back Shifts on Change Day.....	34
20.13	Duty Availability Allowance.....	34
<b>21</b>	<b>UNIFORMS .....</b>	<b>35</b>
21.1	Uniforms and Equipment Advisory Committee.....	35
21.2	Major Change.....	35
21.3	Uniform Allowance.....	35

## TABLE OF CONTENTS

21.4	Uniform Change or Modification. ....	35
21.5	Uniform Option.....	35
21.6	Lost Shields.....	35
<b>22</b>	<b>INDEMNIFICATION .....</b>	<b>35</b>
22.1	Employer Responsibility. ....	35
22.2	Legal Representation.....	36
22.3	Cooperation.....	36
22.4	Applicability.....	36
22.5	Expedited Arbitration.....	36
<b>23</b>	<b>SENIORITY.....</b>	<b>36</b>
23.1	Definition and Application.....	36
23.2	Furlough Scheduling.....	37
23.3	Promotion.....	37
23.4	Seniority List.....	37
23.5	Priority Schedule for Use of Elective Time. ....	38
23.6	Overtime for Pre-Planned Events. ....	38
23.7	Holiday Assignment.....	38
23.8	Filling Recognized Vacancies. ....	39
23.9	Filling Unit Duty Assignments. ....	40
23.10	Non-Disciplinary Demotion. ....	42
23.11	Details.....	42
23.12	Reassignment of Duties. ....	43
23.13	Acting Desk Sergeant.....	43
<b>24</b>	<b>EDUCATIONAL REIMBURSEMENT.....</b>	<b>43</b>
<b>25</b>	<b>LIFE AND HEALTH INSURANCE PROVISIONS .....</b>	<b>45</b>
25.1	Life Insurance. ....	45
25.2	Medical and Dental Plans. ....	45
25.3	Ambulance Fees.....	46
25.4	Labor Management Committee on Health Care.....	46
<b>26</b>	<b>WAGES.....</b>	<b>47</b>
26.1	Salary Schedule.....	47
26.2	Bi-lingual Compensation. ....	47
26.3	Work Out of Grade.....	47
26.4	Payment of Wages.....	48
26.5	Payment of Time. ....	48
<b>27</b>	<b>RESIDENCY.....</b>	<b>48</b>
<b>28</b>	<b>DURATION, ENFORCEMENT AND DISPUTE RESOLUTION .....</b>	<b>48</b>
28.1	Term of Agreement. ....	48
28.2	Continuing Effect.....	49
28.3	Impasse Resolution, Ratification and Enactment.....	49

## TABLE OF CONTENTS

<b>29</b>	<b>BABY FURLOUGH DAYS</b> .....	<b>51</b>
<b>29A</b>	<b>FURLOUGHS</b> .....	<b>52</b>
<b>30</b>	<b>PERSONAL LEAVES OF ABSENCE</b> .....	<b>52</b>
30.1	Personal Leave. ....	52
30.2	Military Leave.....	52
<b>31</b>	<b>STEADY WATCH</b> .....	<b>53</b>
31.1	Implementation. ....	53
31.2	Alternate Response Section Bidding. ....	53
31.3	Exclusions. ....	54
31.4	Annual Selection Process.....	54
31.5	Filling of Vacancies.....	55
31.6	Temporary Watch Assignments.....	55
31.7	Joint Labor Management Committee.....	56
31.8	Dispute Resolution.....	56
<b>32</b>	<b>COMPLETE AGREEMENT</b> .....	<b>57</b>
<b>33</b>	<b>SAVINGS CLAUSE</b> .....	<b>57</b>

## APPENDICES

<b>A</b>	<b>Salary Schedules For Sworn Police Personnel</b> .....	<b>58</b>
<b>B</b>	.....	<b>63</b>
<b>C</b>	<b>Auxiliary Police Aides</b> .....	<b>64</b>
<b>D</b>	<b>Dental Plan</b> .....	<b>65</b>
<b>E</b>	<b>Network Changes</b> .....	<b>66</b>
<b>F</b>	<b>In-Network/Out-Of-Network Care</b> .....	<b>67</b>
<b>G</b>	<b>Health Care Contributions For Active Members</b> .....	<b>68</b>
<b>H</b>	<b>Prescription Drug Costs</b> .....	<b>69</b>
<b>I</b>	<b>Chemical Dependency And Mental Health</b> Co-Insurance And Limits .....	<b>70</b>
<b>J</b>	<b>Behavioral Intervention System – Personnel Concerns Program</b> .....	<b>71</b>
<b>K</b>	<b>High Risk Pregnancy Screening Program</b> .....	<b>73</b>
<b>L</b>	<b>Affidavits In Disciplinary Investigations</b> .....	<b>74</b>
<b>M</b>	<b>Expedited Arbitration Rules</b> .....	<b>76</b>
<b>N</b>	<b>Procedures For Injury On Duty And Recurrence Claims</b> .....	<b>78</b>
<b>O</b>	<b>Subrogation Language For City Of Chicago</b> .....	<b>79</b>
<b>P</b>	<b>Benefits During Probationary Period</b> .....	<b>81</b>
<b>Q</b>	<b>Discipline Screening Program</b> .....	<b>83</b>
<b>R</b>	<b>Procedures For Psychological Review</b> .....	<b>84</b>
<b>S</b>	<b>Ground Rules For Fast Track Arbitrations Of</b> Suspensions Between Sixteen And Thirty Days .....	<b>86</b>
<b>T</b>	<b>Drug And Alcohol Testing</b> .....	<b>87</b>



## TABLE OF CONTENTS

### LETTERS AND MEMORANDA OF UNDERSTANDING

Notice To Supervisors Regarding Progressive Discipline .....	90
Maintenance of Benefits .....	91
District Unit Bid Assignments .....	92
Bidding Procedures .....	93
Physical Fitness .....	94
Physical Fitness Incentive .....	95
Health Care Plan .....	96
Alternative Medical Coverage .....	97
Retroactivity of Wage Increases to Retirees .....	100
Educational Reimbursement .....	102
Negotiations/"Pattern and Practice" Litigation.....	103
Negotiations/Section 8.4 .....	104
Negotiations/Section 8.7 .....	105
Article 18 .....	106
Videotaping of Witnesses Before the Police Board .....	107
Disputed I.O.D. Claims .....	108
Article 22 Indemnification .....	109
Vehicle License Plate/City Sticker Violations .....	110
One-Half Hour Lunch Period.....	112
Furloughs from the Mounted Unit.....	113
Remittance for Health Fairs .....	114
Vocational Training Program .....	115
Medical Services Section/Referral Physician List.....	116
Wellness Benefit.....	117
Department Procured Outside Employment .....	118
55 Year Old Retiree Health Care Benefits .....	120
Joint Pension Legislation Committee.....	124
Work Day Schedules .....	125
Amendment to Work Schedule Agreement.....	135
Change of Schedule .....	136
District Desk Officer Bid Positions, Work Day Schedules .....	137
Article 23, Seniority (defined and clarified) .....	138
Disciplinary Investigations .....	139

### **Section 5.3 — Union Liability.**

Upon the failure of the Lodge to comply with the provisions of Section 5.2 above, any agent or official of the Lodge who is an officer covered by this Agreement may be subject to the provisions of Section 5.4 below.

### **Section 5.4 — Discipline of Strikers.**

Any officer who violates the provisions of Section 5.1 of this Article shall be subject to immediate discharge. Any action taken by the Employer against any officer who participates in action prohibited by Section 5.1 above shall not be considered as a violation of this Agreement and shall not be subject to the provisions of the grievance procedure; except that the issue whether an officer in fact participated in a prohibited action shall be subject to the grievance and arbitration procedure.

## **ARTICLE 6 — BILL OF RIGHTS**

### **Section 6.1 — Conduct of Disciplinary Investigation.**

All complaints against an officer covered by this Agreement shall be processed in accordance with the procedures set forth in Appendix L.

Whenever an officer covered by this Agreement is the subject of a disciplinary investigation other than Summary Punishment, the interrogation will be conducted in the following manner:

- A. The interrogation of the officer, other than in the initial stage of the investigation, shall be scheduled at a reasonable time, preferably while the officer is on duty, or if feasible, during daylight hours.
- B. The interrogation, depending upon the allegation, will normally take place at the officer's unit of assignment, the **Independent Police Review Authority**, the Internal Affairs Division or other appropriate location.
- C. Prior to an interrogation, the officer under investigation shall be informed **of the identities of: the person in charge of the investigation, the interrogation officer and all persons present during the interrogation and shall be advised whether the interrogation will be audio recorded.** When a formal statement is being taken, all questions directed to the officer under interrogation shall be asked by and through one interrogator.
- D. Unless the Superintendent of Police specifically authorizes in writing, no complaint or allegation of any misconduct concerning any incident or event which occurred five (5) years prior to the date the complaint or allegation became known to the Department shall be made the subject of a Complaint Register investigation or be re-opened or re-investigated after five (5) years from the date the Complaint Register number was issued.

No anonymous complaint made against an officer shall be made the subject of a Complaint Register investigation unless the allegation is a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute.

No anonymous complaint regarding residency or medical roll abuse shall be made the subject of a Complaint Register investigation until verified. No ramifications will result regarding issues other than residency or medical roll

abuse from information discovered during an investigation of an anonymous complaint regarding residency or medical roll abuse, unless of a criminal nature as defined in the preceding paragraph.

- E. Immediately prior to the interrogation of an officer under investigation, he or she shall be informed in writing of the nature of the complaint and the names of all complainants.
- F. The length of interrogation sessions will be reasonable, with reasonable interruptions permitted for personal necessities, meals, telephone calls and rest.
- G. An officer under interrogation shall not be threatened with transfer, dismissal or disciplinary action or promised a reward as an inducement to provide information relating to the incident under investigation or for exercising any rights contained herein. The Department shall not retaliate in any manner against any officer covered by this Agreement who cooperates in a Department disciplinary investigation.
- H. An officer under investigation will be provided with a copy of any **and all statements he or she has made that are audio recorded or in writing within seventy-two (72) hours of the time the statement was made. In the event a re-interrogation of the officer is required within the seventy-two- (72-) hour period following the initial interrogation, the officer will be provided with a copy of any prior statements before the subsequent interrogation.**
- I. If the allegation under investigation indicates a recommendation for separation is probable against the officer, the officer will be given the statutory administrative proceedings rights, or if the allegation indicates criminal prosecution is probable against the officer, the officer will be given the constitutional rights concerning self-incrimination prior to the commencement of interrogation.
- J. An officer under interrogation shall have the right to be represented by counsel of his or her own choice and to have that counsel present at all times during the interrogation, and/or at the request of the officer under interrogation, he or she shall have the right to be represented by a representative of the Lodge, who shall be either a police officer on leave to work for the Lodge or a retired police officer working for the Lodge. The interrogation shall be suspended for a reasonable time until representation can be obtained.
- K. **The provisions of this Agreement shall be deemed to authorize the Independent Police Review Authority and the Internal Affairs Division to require officers under interrogation to provide audio recorded statements, provided that the provisions in Section 6.1 are satisfied.**
- L. **If an officer provides a statement during the investigation conducted promptly following a shooting incident and then is later interrogated by the Independent Police Review Authority or the Internal Affairs Division as part of an investigation related to such incident, the officer shall be provide with a copy of the portion of any official report that purportedly summarizes his or her prior statement before the interrogation.**

## Section 6.2 — Witness Officer's Statements in Disciplinary Investigations.

When an officer covered by this Agreement is required to give a statement, in the presence of an observer, as a witness in a disciplinary investigation other than Summary Punishment, or as a witness in a police-related shooting investigation, at the request of the officer the interview shall be conducted in the following manner:

- A. The interview of the officer shall be scheduled at a reasonable time, preferably while the officer is on duty, or if feasible, during daylight hours.
- B. The interview, depending on the nature of the investigation, will normally take place at the officer's unit of assignment, the **Independent Police Review Authority**, the Internal Affairs Division or other appropriate location.
- C. Prior to an interview, the officer being interviewed shall be informed of the **identities of: the person in charge of the investigation, the interviewing officer and all persons present during the interview; whether the interview is being audio recorded**; and the nature of the complaint, including the date, time, location and relevant R.D. number, if known. When a formal statement is being taken, all questions directed to the officer being interviewed shall be asked by and through one interviewer.
- D. The officer will be provided with a copy of any **and all** statements he or she has made **that are audio recorded or in writing** within **seventy-two (72)** hours of the time the statement was made. **In the event a re-interview of an officer is required within the seventy-two (72) hour period following the initial interview, the officer will be provided with a copy of such statements before the subsequent interview.**
- E. An officer being interviewed pursuant to this section shall, upon his or her request, have the right to be represented by counsel of his or her own choice and to have that counsel present at all times during the interview, or at the request of the officer being interviewed, he or she shall have the right to be represented by a representative of the Lodge who shall be either a police officer on leave to work for the Lodge or a retired police officer working for the Lodge. For purposes of this paragraph E, "represented" shall mean that the officer's counsel and/or representative shall only advise the officer but shall not in any way interfere with the interview. The interview shall be postponed for a reasonable time, but in no case more than forty-eight (48) hours from the time the officer is informed of the request for an interview and the general subject matter thereof and his or her counsel or representative can be present; provided that, in any event, interviews in shooting cases may be postponed for no more than two hours.
- F. This Section 6.2 shall not apply to: questions from a supervisor in the course of performing his or her normal day-to-day supervisory duties or to requests to prepare detailed reports or To-From-Subject Reports, except To-From-Subject Reports that relate to the police-related shooting.
- G. The length of interviews will be reasonable, with reasonable interruptions permitted for personal necessities, meals, telephone calls and rest.
- H. **The provision of this Agreement shall be deemed to authorize the Independent Police Review Authority and the Internal Affairs Division to**



require officers being interviewed to provide audio recorded statements, provided that the provision in Section 6.2 are satisfied.

- I. If an officer provides a statement during the investigation conducted promptly following a shooting incident and then is later interviewed by the Independent Police Review Authority or the Internal Affairs Division as part of an investigation related to such incident, the officer shall be provided with a copy of the portion of any official report that purportedly summarizes his or her prior statement before the interview.

#### **Section 6.3 — Non-Adoption of Ordinance.**

The City of Chicago shall not adopt any ordinance and the Chicago Police Department shall not adopt any regulation which prohibits the right of an officer to bring suit arising out of his or her duties as an officer.

#### **Section 6.4 — Photo Dissemination.**

No photo of an officer under investigation shall be made available to the media prior to a conviction for a criminal offense or prior to a decision being rendered by the Police Board.

#### **Section 6.5 — Compulsion of Testimony.**

The Chicago Police Department shall not compel an officer under investigation to speak or testify before, or to be questioned by any nongovernmental agency relating to any matter or issue under investigation.

#### **Section 6.6 — Auto-Residency Card.**

No officer shall be required to submit the information now required in an Auto-Residency Card as it applies to any other member of his or her family or household.

#### **Section 6.7 — Polygraph.**

No officer shall be disciplined for refusal to take a polygraph exam and the results of the polygraph exam shall not be admissible as evidence in proceedings before the Police Board or in any proceeding where the officer may appeal to the Police Board, unless by Illinois or Federal Court decision or statute, such evidence shall become admissible before the Police Board.

In the event that the results of a polygraph exam become admissible as evidence before the Police Board and the Department determines a polygraph exam is necessary, the complainant will be requested to take a polygraph exam first. If the complainant refuses to take a polygraph exam, the accused police officer will not be requested to take a polygraph exam. If the complainant takes the polygraph exam and the results indicate deception, the accused officer may be requested to take a polygraph exam covering those issues wherein the examiner determines that the complainant is truthful.

When the polygraph is used, the accused member will be advised twenty-four (24) hours prior to the administering of the test, in writing, of any questions to which the Department will request an answer.

#### **Section 6.8 — Disclosure.**

An officer shall not be required to disclose any item of his or her property, income, assets, source of income, debts, or personal or domestic expenditures (including

those of any member of his or her family or household) unless such information is reasonably necessary to monitor the performance of the officer's job, violations of reasonable Employer rules, statutes, ordinances, or this Agreement. In the administration of fringe benefits applicable to all employees of the Employer, officers covered by this Agreement may be required to disclose any coverage they (including any member of their families or households) may have under health or medical insurance and the name and appropriate identification of the carrier and coverage. The parties agree that the disclosure of such personal information shall not be made available for public inspection or copying because such would be an unwarranted invasion of personal privacy of the officer, and/or is intended to otherwise be exempt from any state or local freedom of information statute, ordinance or executive order.

#### **Section 6.9 — Media Information Restrictions.**

The identity of an officer under investigation shall not be made available to the media unless there has been a criminal conviction or a decision has been rendered by the Police Board (or by the Superintendent). However, if the officer is found innocent, the officer may request and the Department shall issue a public statement.

#### **Section 6.10 — Discipline Screening Program.**

The Discipline Screening Program shall be available to officers covered by this Agreement who, as a result of a sustained Complaint Register investigation, receive a recommendation for discipline of fifteen (15) days or less. The Rules of Procedure for the Discipline Screening Program are set forth in Appendix Q of this Agreement.

#### **Section 6.11 — Prohibition on Use and Disclosure of Social Security Numbers.**

The Social Security Number of an officer covered by this Agreement shall not be disclosed and shall not be included on documents, except those essential for payroll or compensation purposes.

#### **Section 6.12 — Mediation.**

At any time during an investigation, prior to an accused officer giving a statement, the parties may agree to mediate the resolution of the Complaint Register investigation. The "parties" shall mean the accused officer, with or without his or her Lodge representative, and a representative of **IAD or IPRA**, as appropriate. The **IAD/IPRA** investigator assigned to the case will not be present at the mediation.

Prior to the mediation session, **IAD/IPRA** shall cause the accused officer to be served with a Notice of Administrative Rights and a Notice of Charges and Allegations, which will include the rule violation and the factual basis therefore. Neither party is required to meet.

The representatives at the meeting shall discuss the allegations and **IAD's/IPRA's** position regarding the finding of the case. The parties shall discuss whether they can reach accord as to a disposition. By accepting the discipline, the accused officer is waiving his or her right to grieve or appeal the decision, and the accused officer is not required to submit any statement or response. If the accused officer does not agree with **IAD's/IPRA's** position, the disciplinary process will continue as designated.

Statements made and information relayed at the mediation which are not included in the file will not be used against the officer or included in the file at any later date.

If IAD/IPRA and the accused officer agree on a penalty less than separation, it is binding on both parties. However, the Superintendent retains the right to seek the separation of an officer.

### **Section 6.13 — Review Procedures.**

The procedures for the review of recommendations for discipline, such as Command Channel Review, and the procedures by which officers covered by the Agreement may challenge the recommendation and imposition of discipline which currently exist, such as the Discipline Screening Program, Direct Appeal to the Superintendent, the Police Board, etc., will continue to exist and be available to said officers except as expressly modified or eliminated as set forth in the Agreement.

## **ARTICLE 7 — SUMMARY PUNISHMENT**

### **Section 7.1 — Administration of Summary Punishment.**

It is agreed that the provisions contained elsewhere in this Agreement shall not apply to Summary Punishment action, which action shall be considered as an alternative to formal disciplinary procedures, provided that in each such action the following shall apply:

- A. The Summary Punishment which may be administered conforms to the "Notice To Supervisors Regarding Progressive Discipline," as set forth in this Agreement, and is limited to:
  - 1. reprimand;
  - 2. excusing a member for a minimum of one day to a maximum of three days without pay.

In lieu of days off without pay, an officer shall be permitted to utilize accumulated elective time to satisfy the Summary Punishment.

- B. The Department shall promulgate, maintain and publicize reasonable guidelines which will specify those acts, omissions or transgressions, the violation of which will subject an officer to summary punishment action, and the penalties for each such violation, which shall be uniformly applied.

### **Section 7.2 — Challenge of Summary Punishment.**

After Summary Punishment has been administered three (3) times within a twelve (12) month period, an officer who wishes to contest the application of Summary Punishment on a fourth occasion within the last twelve (12) months may contest the fourth and/or succeeding applications of Summary Punishment by timely challenge through the Complaint Register process or the grievance procedure.

## **ARTICLE 8 — EMPLOYEE SECURITY**

### **Section 8.1 — Just Cause Standard.**

No officer covered by this Agreement shall be suspended, relieved from duty or otherwise disciplined in any manner without just cause.

**RECEIVED**

BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO

MAR 30 2012

Police Board  
City of Chicago

IN THE MATTER OF CHARGES )  
AGAINST )  
Police Officer Bruce Askew, )  
Respondent. )

11 PB 2776

Hearing Officer Thomas Johnson

**NOTICE OF FILING**

TO: **VIA Electronic Mail:** [wnfahy@fahylawoffice.com](mailto:wnfahy@fahylawoffice.com)  
Will Fahy, Counsel for Respondent Askew  
206 S. Jefferson, Suite 100  
Chicago, IL 60661

**VIA Electronic Mail:** [max.caproni@cityofchicago.org](mailto:max.caproni@cityofchicago.org) ,  
[carisa.boatman@cityofchicago.org](mailto:carisa.boatman@cityofchicago.org)  
Chicago Police Board  
Max Caproni, Executive Director  
Carisa Boatman, Supervising Clerk  
30 N. LaSalle, Suite 1220  
Chicago, IL 60602

PLEASE TAKE NOTICE that I caused to be filed with the Police Board of the City of Chicago the attached **SUPERINTENDENT MCCARTHY'S RESPONSE TO THE CHICAGO POLICE BOARD'S MARCH 16, 2012 ORDER** on the 30<sup>th</sup> day of March, 2012.

**CERTIFICATE OF SERVICE**

I, Wynter C.N. Jackson, hereby certify that I caused copies of both this **SUPERINTENDENT MCCARTHY'S RESPONSE TO THE CHICAGO POLICE BOARD'S MARCH 16, 2012 ORDER** to be sent via electronic mail as indicated above to the persons identified above on the 30<sup>th</sup> day of March, 2012.

By:

STEPHEN R. PATTON  
Corporation Counsel of the  
City of Chicago

Wynter C.N. Jackson  
Assistant Corporation Counsel

30 North LaSalle Street  
Suite 1040  
Chicago, Illinois 60602  
(312) 744-4861



**BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO**

**IN THE MATTER OF CHARGES FILED AGAINST** )  
**POLICE OFFICER BRUCE ASKEW,** ) **No. 11 PB 2776**  
**STAR No. 9015, DEPARTMENT OF POLICE,** )  
**CITY OF CHICAGO,** )  
 )  
**RESPONDENT.** )

**ORDER**

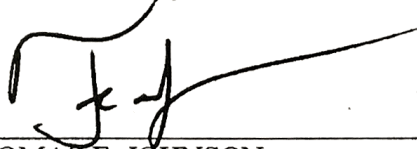
This matter having come before the Police Board of the City of Chicago for consideration of the Respondent's Motion to Strike and Dismiss and of the merits of the case, and based on the issues raised at the April 2, 2012, hearing that need to be further addressed, it is hereby ordered that the parties to file supplemental briefs, no later than fourteen (14) days from the date of this Order, addressing the following questions:

1. What is the applicability and effect of 65 ILCS 5/10-1-18.2? Does Section 18.1 apply to the City of Chicago?
2. If Chicago's home rule powers in this area are preempted by section 18.2, does state law (e.g. 5 ILCS 315/15 or any predecessor) require that the collective bargaining agreement nonetheless prevail over section 65 ILCS 5/10-1-18.1 if there is a conflict between the two?
3. Is there a conflict between section 65 ILCS 5/10-1-18.1 and section 6.1(D) of the collective bargaining agreement?

In addition, the parties may address in the supplemental brief any other issues raised at the April 2, 2012, hearing.

After receiving these supplemental briefs, the Police Board may hold a further hearing on these issues, and will further consider this matter.

Enter:

  
\_\_\_\_\_  
THOMAS E. JOHNSON  
Hearing Officer

Date:

April 12, 2012

**RECEIVED**

BEFORE THE POLICE BOARD  
OF  
THE CITY OF CHICAGO

APR 30 2012

**Police Board  
City of Chicago**

IN THE MATTER OF CHARGES )  
AGAINST )  
Police Officer Bruce Askew, )  
Respondent. )

11 PB 2776

*Hearing Officer Thomas Johnson*

**SUPERINTENDENT MCCARTHY'S RESPONSE TO THE  
CHICAGO POLICE BOARD'S APRIL 12, 2012 ORDER**

Garry McCarthy, Superintendent of Police, by his attorney Stephen R. Patton, Corporation Counsel of the City of Chicago, submits the following in response to the Chicago Police Board's order issued on April 12, 2012, directing the parties to file supplemental briefs regarding (1) the applicability of 65 ILCS 5/10-1-18.1 to the City of Chicago; (2) the effect of the home rule preemption in 65ILCS 5/10-1-18.2; and (3) the impact of Section 6.1(D) of the collective bargaining agreement ("CBA") between the City of Chicago and the Fraternal Order of Police, Lodge 7 ("FOP") on Sections 18.1 and 18.2.

Section 10-1-18.1 of the Illinois Municipal Code, 65 ILCS 5/10-1-18.1, grants the Police Board the power to remove, discharge or suspend employees. Section 10-1-18.1 states the following in pertinent part:

Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held. If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within five years after the commission of the act upon which the charge is based. The statute of limitations established in this Section 10-1-18.1 shall apply only to acts of unreasonable force occurring on or after the effective date of this amendatory Act of 1992.

pursuant to the law of the State of Illinois.” (Chicago Municipal Code § 25.1-1 (1976).) However, the ordinance made clear that it would not apply to the Police Board, its manner of selection, composition, or its powers and duties as set forth in a separate municipal ordinance and that the provisions of Section 10-1-18.1 would continue to apply. Hence, although the City did not adopt Article 10, Division 1, that included Section 18.1, it made clear that Section 18.1 would, nevertheless, apply. The 1976 ordinance provided in pertinent part:

This Ordinance shall not apply nor have any effect upon the Police Board, its manner of selection, composition, or its powers and duties as set forth in Section 11-2 and Section 11-3 of this Code and Section 3-7-3.1, Section 10-1-18.1, and Section 10-1-45 of the Illinois Municipal Code. Nor shall this ordinance have any effect upon the selection, powers or duties of the Superintendent of Police as set forth in the Municipal Code of the City of Chicago and Section 3-7-3.2 of the Illinois Municipal Code.

Chicago Municipal Code §25.1-13 (1976).

In 1981, the City Council repealed the 1976 personnel ordinance and replaced it with a new one, which like the 1976 ordinance, applied to all employees in city service, including police officers except police officers above the rank of captain. It also provided that Section 10-1-18.1 of the State Municipal Code would continue to apply.

Today, the City’s most recent personnel ordinance remains essentially the same as its 1976 and 1981 predecessors. It states the following in pertinent part:

This Ordinance shall not apply nor have any effect upon the police board, its manner of selection, composition, or its powers and duties as set forth in Section 2-84-020 and 2-84-030 of this code and Section 3-7-3.1, Section 10-1-18.1 and Section 10-1-45 of the Illinois Municipal Code. Nor shall this ordinance have any effect upon the selection, powers or duties of the Superintendent of Police as set forth in the Municipal Code of the City of Chicago and Section 3-7-3.2 of the Illinois Municipal Code.

Chicago Municipal Code 2-74-130 (1990).

In short, while the City did not adopt Article 10, Division 1, and instead adopted its own civil service system, under the system the City adopted, the Police Board remains subject to Section 10-1-18.1 (and Section 10-1-45) of the Illinois Municipal Code.<sup>1</sup>

In 1992, the Illinois General Assembly amended Section 10-1-18.1 to include a five year statute of limitations for unreasonable force allegations and added the home rule preemption provision in Section 10-1-18.2. Shortly, thereafter, the City and the FOP, the sole and exclusive representative for Chicago police officers, amended Article 6 of the CBA ("BILL OF RIGHTS") granting the Superintendent the authority to act on complaints more than five years old and to reopen a case that would otherwise be closed because of the five-year statute of limitations. The City negotiated for this right in direct response to the five year statute of limitations on police investigations of officer misconduct provided in Sections 10-1-18.1. Section 6.1 (D) of the CBA provides the following in pertinent part:

D. Unless the Superintendent of Police specifically authorizes in writing, no complaint or allegation of any misconduct concerning any incident or event which occurred five (5) years prior to the date the complaint or allegation became known to the Department shall be made the subject of a Complaint Register investigation or be re-opened or reinvestigated after five (5) years from the date the CR# was issued.

Section 6.1 (D) was first included in the 1995–1999 contract and was ratified by the City Council in September 1996. Under the plain language of this provision, the Superintendent has the authority to act on complaints and allegations of misconduct that occurred more than five years from the date the complaint or allegation became known to the Department. That the Superintendent determined it was necessary to negotiate for this authority confirms that without the contract provision the limitations period would

---

<sup>1</sup> Section 10-1-45 allows for review of personnel decisions under the Administrative Review Law, now 735 ILCS 10/3-101 et seq.



apply. Clearly, if the five-year statute of limitation in Section 10-1-18.1 had no effect on the Superintendent's authority to act on complaints more than five years old, the Superintendent would not have bothered to negotiate for a contract provision to obviate the effect of that provision. Collective bargaining is a give and take, and it is reasonable to conclude that the FOP demanded something from the Superintendent in exchange for this concession. The Superintendent would not have given that something away if he did not have to.

In any case in which Section 6.1(D) conflicts with the five-year statute of limitations in Section 10-1-18.1, the CBA is controlling and supersedes the statute. There is a duty in Illinois under the Illinois Public Labor Relations Act to engage in collective bargaining. While the Act does not compel either party to agree to a proposal or require the making of a concession, see 5 ILCS 315/7, the Act provides that "any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any contrary statutes, charters, ordinances, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents." 5 ILCS 315/15. Thus, under the Act, terms of employment that have been the subject of a collectively bargained for agreement take precedence over any other laws, ordinances or rules that relate to the same issue. See Brownlee v. City of Chicago, 983 F. Supp. 782 (N.D. Ill., 1997) (court concluded that under Illinois law, municipal code and rules were preempted by collective bargaining agreement).

This rule applies even to home rule governments that have established their own civil service systems. A home rule government that is also a party to a collective

bargaining agreement must follow the provisions of the agreement established by the collective bargaining agreement process. As the court explained in Health Employees Labor Program of Metro Chicago v. County of Cook, 236 Ill.App.3d 93 (1<sup>st</sup> Dist. 1992), the County's "status as a home rule unit of local government renders the civil service provisions of the [Counties] Code optional upon it." Id. At 96 (citing AFSCME v. County of Cook, 145 Ill.2d 475, 491 (1991)). For that reason, the civil service system "cannot be held to prevail over the rights of public employees, who, have become members of a collective-bargaining unit duly authorized by the employees and recognized by the employer." Id. (citing AFSCME, 145 Ill.2d at 487.) See also 5 ILCS 315/15(c) (home-rule preemption provision of the Illinois Public Labor Relations Act).

Here, the City and the FOP negotiated and bargained for, and reached, an agreement that allows the Superintendent to act on any allegation of misconduct that is more than five years old. To be sure, the Superintendent must "specifically authorize in writing" proceedings on older charges. But one such authorization is the filing of charges with the Board, as were filed in this matter.

Finally, this result is supported by public policy. Precluding the Superintendent from bringing allegations of excessive force that are more than five years old abandons everyday logic and arguably the mission of the Board. Application of the five-year statute of limitations to that charge would allow other proceedings on allegations of other misconduct – such as an officer's failure to reside within the City and failure to follow Department Orders – but would preclude proceedings on excessive force, which is one of the most important to the public. Excessive force denigrates the public's trust in and respect for officers because it is a serious abuse of the officer's police powers. This type

of charge against an officer is based on that officer's interaction with the public, and not merely an internal matter. Indeed, excessive force is the basis for the majority of complaints about officers to the Police Department and IPRA. While Section 10-1-18.1 would have the effect of imposing a five-year statute of limitations on only these complaints but for the CBA, the statute is not controlling precisely because it has been superseded by the CBA. Moreover, what the General Assembly thought might be a good statewide rule may not work for Chicago, which presumably is why the City, with FOP's agreement, has changed this limitations period by CBA.


In sum, Section 6.1(D) of the CBA authorizes the Superintendent to act on complaints that are more than five years old and because of its primacy, the five-year statute of limitations in Section 10-1-18.1 does not apply where, as here, the Superintendent has elected to act in writing on a complaint that is more than five years old.

Thus, the answers to the questions posed in the Board's April 12, 2012 order are as follows:

While Section 18.1 applies to the City by operation of Section 2-74-130 of the Chicago Municipal Code, Section 18.1's five-year statute of limitations is superseded by Section 6.1 (D) of the CBA where, as here, the Superintendent authorizes in writing action on a complaint that is more than five years old.

Respectfully submitted,

STEPHEN R. PATTON  
Corporation Counsel of the  
City of Chicago

By:   
Wynter C. N. Jackson  
Assistant Corporation Counsel

30 North LaSalle Street  
Suite 1040  
Chicago, Illinois 60602  
(312) 742-7049(v)



POLICE BOARD OF THE CITY OF CHICAGO

RECEIVED

IN RE:

)

No. 11 PB 2776

APR 26 2012

BRUCE ASKEW,

)

)

RESPONDENT

)

)

Police Board  
City of Chicago

**SUPPLEMENTAL MOTION TO STRIKE AND DISMISS**

NOW COMES the Respondent, Bruce Askew, by his attorney, William N. Fahy, and submits the following in response to the Chicago Police Board's ("Board") April 12, 2012 Order and states as follows:

On April 12, 2012, the Board asked both parties to submit briefs to address the applicability and effect of 65 ILCS 5/10-1-18.1 and 18.2, the Collective Bargaining Agreement Section 6.1D and state law including 5 ILCS 315/5 (or any predecessor) have on the matter at issue for Respondent's motion to strike and dismiss.

**65 ILCS 5/10-18.1 AND 18.2 CLEARLY APPLY TO THE CITY OF CHICAGO**

Illinois Municipal Code 65 ILCS 5/10-18.1 directly applies to the City of Chicago. First, the statute directly states its applicability in the title. Section 18.1 is "Municipality of more than 500,000; police department; removal, discharge or suspension". The only city in Illinois with a population over 500,000 is Chicago. The drafters could not have intended this law to apply to any other municipality in the state. As such, Section 18.2 of the same Code, which refers back to Section 18.1, also applies to the City of Chicago.

Home rule preemption. No municipality, *including a municipality that is a home rule unit*, may regulate the period of time or establish or enforce a statute of limitations relating to charges brought against a police officer before a Police Board, Civil Service Commission, or other board or officer empowered by law or ordinance to investigate

police misconduct if the charge is based upon an allegation of the use of unreasonable force by a police officer. The statute of limitations established in Sections 10-1-18 and 10-1-18.1 [65 ILCS 5/10-1-18 and 65 ILCS 5/10-1-18.1] for those charges *are an exclusive exercise of powers and functions by the State* under paragraph (h) of Section 6 of Article VII of the Illinois Constitution.

Illinois Municipal Code, 65 ILCS 5/10-1-18.2

As the Illinois Constitution mandates,

“home rule units may exercise and perform *concurrently* with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.”

Illinois Const., Art. VII, § 6.

Just as the Constitution states and the City conceded, the language in the statute is clear. Pursuant to Section 18.2, the City cannot opt out of Section 18.1 because they are a home rule unit. Both sections apply and are in effect for the City of Chicago and Police Department. As such, the charges against Officer Askew should be dismissed.

**THERE IS NO CONFLICT BETWEEN 65 ILCS 5/10-18.1 AND SECTION 6.1(D) OF THE COLLECTIVE BARGAINING AGREEMENT**

The Illinois Municipal Code Section 18.1 and the Collective Bargaining Agreement (“CBA”) Section 6.1 D do not conflict because they address two separate areas of the disciplinary process. The Illinois Municipal Code 65 ILCS 5/10-1-18.1(b) states requirements for the timing in which **charges** must be brought against an Officer for allegations of unreasonable force. The CBA Section 6.1D states requirements for when **allegations or complaints** may be accepted for an investigation or re-investigation of misconduct. Neither address the same issue therefore the sections do not conflict with each other.

Section 18.1 clearly states "If the charge is *based upon an allegation* of the use of unreasonable force by a police officer, the **charge** must be brought within 5 years after the commission of the act upon which the charge is based." Illinois Municipal Code, 65 ILCS 5/10-1-18.1(b). Unlike Section 18.1 of the Code, the Collective Bargaining Agreement ("CBA") cites the timing on when **complaints** or **allegations** may be made subject to a Complaint Register ("CR") investigation. This section of the CBA only addresses allegations and complaints and not charges at the police board. Charges are what are addressed in Section 18.1 of the Code.

While the CBA left the door open initiating, reinvestigating allegations and possibly assessing discipline for officer misconduct within a five year timeframe, or after with Superintendent authorization, it clearly did not open the door to allow charges to be brought at the Board beyond five years for allegations of excessive force. However, in a non-excessive force case the door is still open to bring charges at the Police Board as it was never addressed by statute or the CBA. Section 6.1D and Section 18.1 address entirely different matters, as such there is no conflict between the CBA and the statute. Both function separately and the charges should be dismissed because the Statute of Limitations in this case had run prior to charges being brought against Respondent.

Further, as is the case with statutes, the primary task in construing a rule is to ascertain and give effect to the intent of its drafters. *In re Estate of Rennick*, 181 Ill. 2d 395, 404-05, 229 Ill. Dec. 939, 692 N.E.2d 1150 (1998). "The most reliable indicator of intent is the language used, which should be given its plain and ordinary meaning." *Rennick*, 181 Ill. 2d at 405. See also *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (Ill. 2002) According to the plain meaning rule, absent a contrary definition within the statute, words must be given their plain, ordinary and

literal meaning. If the words are clear, they must be applied, even though the intention of the legislator may have been different or the result is harsh or undesirable.

Here, the legislature gave no definitions to the word charges or allegations in the statute, or the CBA for that matter, accordingly the plain meaning rule applies. There is a complete difference between the terms allegation and charges. Allegations require investigation in order to pursue charges. Further, just because a complainant makes an allegation, or an officer addresses allegations against him in a statement, does not mean that charges will be filed at the Police Board. Allegations are not charges, allegations may lead to charges at the Police Board but they rarely do. There are several disciplinary options available for allegations that are sustained short of filing charges at the Police Board. Therefore, the statute and the CBA address two entirely different matters and there is no conflict between them.

**THE CBA DOES NOT PREVAIL OVER 65 ILCS 5/10-18.1 REGARDLESS OF THE  
EXISTENCE CONFLICTING LANGUAGE**

As previously discussed, there is no conflict between Section 18.1 of the Code and Section 6.1D of the CBA, so there is no need to address this issue. Assuming *arguendo*, the Board finds there is conflicting language the CBA does not prevail over state statute. The not only is the Code binding on the City, but the City is precluded under Illinois Municipal Code, 5 ILCS 315/7, from bargaining over matters that are covered by the Code. This Act governs the collective bargaining relationships of public employers and employees in Illinois. Section 7 of the Act provides:

"A public employer and the exclusive representative have the authority and the duty to bargain collectively \* \* \*The duty to 'bargain collectively' shall also include an obligation to negotiate over any matters with respect to wages, hours, and other conditions of employment, ***not specifically provided for*** in any other law or not specifically in violation of the provisions of any law."



(Emphasis added.) 5 ILCS 315/7 (West 1996).

The Appellate court has held that Section 7 of the Act prevents adopting a union proposal that conflicts with a mandatory statute. *Illinois Fraternal Order of Police Labor Council v. Town of Cicero*, 301 Ill. App. 3d 323, 327-331 (1998). In essence, a municipality has no authority to change a statute. *Id.* Accordingly, because the statute of limitations on charges for unreasonable force is specifically provided for in Section 18.1, and home rule was exempted by Section 18.2, it was not a proper subject of bargaining. These laws cannot be bargained away or changed by the CBA.

The court has held the Municipal Code is optional for home rule municipalities. See *City of Calumet City v. Illinois Fraternal Order of Police Labor Council*, 344 Ill. App. 3d 1000, 1009 (2003) citing *Police Labor Council*, 301 Ill. App. 3d at 331. However, Section 18.2 ***specifically and explicitly*** exempted Section 18.1 from regulation by home rule municipalities. This provision likens the City of Chicago to a non-home rule municipality and subjects the City to Section 7 of the Act regarding Section 18.1 of the Code. The City and Fraternal Order of Police were therefore precluded from bargaining on the issue of statute of limitations for unnecessary force claims all together. See *City of Markham v. State & Mun. Teamsters, Local 726*, 299 Ill. App. 3d 615, 233 Ill. Dec. 510, 701 N.E.2d 153 (1 Dist. 1998), appeal denied, 181 Ill. 2d 574, 235 Ill. Dec. 943, 706 N.E.2d 498 (1998). (where a non-home rule city and a union were precluded from bargaining over employee discipline altogether because discipline of officers was specifically provided for in the code). Therefore, *if* the CBA conflicts with language of the statute, that conflict would be void as the city is prevented by law from changing the statute in this instance.

### **CONCLUSION**

The Board should find that Sections 18.1 and 18.2 of the Code apply to the City of Chicago. There is no conflicting language between the CBA and the Code. Even if the Board finds that the language does conflict, the CBA does not change the statute. Further the City and the Union were prevented from bargaining regarding the statute of limitations because the statute prevents them from doing so.

**WHEREFORE** for the foregoing reasons it is respectfully requested that the charges filed against the Respondent be stricken and this case be dismissed.

Respectfully submitted,



---

William N. Fahy

Law Office of William N. Fahy, Ltd.  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
(312)655-1100  
Attorney No: 37812

**POLICE BOARD OF THE CITY OF CHICAGO**

IN RE:

)  
)  
)  
)  
)  
)

No. 11 PB 2776

BRUCE ASKEW,

RESPONDENT

**RECEIVED**

APR 26 2012

**Police Board  
City of Chicago**

**NOTICE OF FILING**

**To:** Ms. Wynter Jackson, ACC  
30 N. LaSalle Street Suite 1020  
Chicago, IL 60602

Please take notice that on April 26, 2012, I filed with the Police Board Respondent's  
SECOND SUPPLEMENTAL MOTION TO STRIKE AND DISMISS a copy of which is  
attached hereto.

Respectfully submitted,

*William N. Fahy*

---

William N. Fahy

**PROOF OF SERVICE**

The undersigned, an attorney, certifies that a copy of the foregoing notice of  
motion and brief was served upon the parties listed above by electronic transmission  
on April 26, 2012.

*William N. Fahy*

---

Law Office of William N. Fahy, Ltd.  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
(312)655-1100  
Attorney No: 37812